PAPERS AND ADDRESSES

ON

PRIMARY REFORM

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PRIMARY REFORM.

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DIRECT PRIMARIES IN KENT COUNTY.

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The enactment of the primary law which we are to discuss was in many respects a new departure in the legislation of Michigan. Former experience furnished little by which those who acted under it could be guided. Under such circumstances, it would not be reasonable to expect that it would at the start work with entire smoothness. Such a law as this is only a piece of political machinery. The test to be applied to new machinery is not, does it accomplish all that we could imagine a machine of that kind could do; not even is it a perfect machine. One thing is always to be taken for granted, that is, it will run more smoothly as time goes on, and those in charge of it become acquainted with its management and understand its use. We have stopped believing that there are any perfect machines, and the test which would apply to the new device is, is it a better machine than the one whose place it took? Is the principle upon which it acts right? Are its defects matters of detail which can be remedied as an acquaintance with the machine increases? If it has defects which are inherent in the construction of the machine and cannot be remedied, are they more than compensated for by the greater merits of its actual accomplishment?

The question, then, which we shall try to answer is not, is this new law a perfect law, but is it a step forward in legislation on a subject where legislation is needed. Are the defects in it matters of detail and convenience, some of which will correct themselves in the familiarity

arising from the mere using, and others of which can be remedied by proper amendments, and those which cannot be amended compensated for by new and important results, or is it so radically defective that it is better to bear the evil of the old method longer and wait until some better device has been created? If the law is a step forward, how long is that step and in what direction? What does our brief experience indicate in this regard?

To answer these questions, it is necessary to consider three things:

First. Very briefly to advert to the conditions of affairs at the time of the enactment of the law, in order that we may judge how far the evil which existed has been remedied.

Second. As the law is buried in the local acts of the State where general attention is not called to it, to consider its provisions.

Third. To examine the practical operation of the law in the two municipal and one general elections which have occurred since its passage.

As to the condition of things at the time the law was passed: Up to 1887 I find no attempt in the statutes of this State to interfere in the matter of primary elections. In that year a statute was passed[1] by which penalties were enacted for falsely impersonating and voting under the name of any other person, or intentionally voting without the right to do so at the primary, or fraudulently and wrongfully destroying ballots cast, or intentionally or wrongfully depositing ballots in ballot boxes, or taking ballots therefrom, or the committing of any fraud or wrong tending to defeat or affect the results of the election.

This law provided also that the presiding officers and directors should be sworn, for the rejection of the vote

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[1]Miller's Compiled Laws, Vol. 3, paragraph 11457.

when challenged and for swearing the vote in. It made intentional swearing falsely under such circumstances perjury. It further provided for the punishment of the officers of the caucus who shall receive the vote of an individual who shall have been challenged, without the oath provided therein, or when the person whose vote is received is known to them not to be entitled by the regulations of the association holding the primary election, to vote. It made the acceptance of money or any valuable thing in consideration for his vote by any person elected as a delegate a misdemeanor. It provided that no primary election should be held in a saloon, barroom or any place adjacent to a place where intoxicating liquors are sold, and it further required that a five days' notice should be given by publication, where there is a newspaper, or posting where there is not, of the time and place where the caucus was to be held.

While this law furnished a means of punishment for the coarser offences, it furnished no other punishment for safeguarding primary election. It provided no rules for its conduct and its effect upon the primaries of the state was very small.

In 1895 an act was passed applying to cities of over 15000 inhabitants which, up to the passage of the law of 1903, governed the primaries in Grand Rapids.[2] This provided that primaries of a party shall be held in the several wards of the city at the same time, but the primaries of the different parties were to be held on different days. In any city from 50,000 to 150,000 the principal committee of any party organization could determine whether the primary should be held by the voting precincts of the several wards of the city, or whether there should be one primary for the whole ward, the same party

[2]Compiled Laws, Vol. 1, Section 3514.

committee determining the time and place of holding the party caucus.

Upon the city or ward committee was also laid the duty of giving notice of the election, the same notice being required as under the law of 1887. If the chairman of the political committee desired the use of voting booths, discretion was given to the Common Council of the cities included in the act, to permit their use.

The board of inspectors was to consist of a chairman who was to be a member of the ward committee and two qualified voters chosen from the residents of the city ward who belonged to the party holding such primary. It was provided that each party desiring to hold primary elections shall, at their first primary election after the act takes effect, elect a ward committee and two inspectors of primaries for each ward or voting precinct, whose term of office shall be for two years. Only qualified voters identified with the party and residents of the ward or precinct for 10 days shall be entitled to vote.

Penalties are provided for soliciting votes from the candidate or from any other person, or receiving directly or indirectly any money, promise of place or position or consideration of any kind for a vote or support or attendance, and for voting at more than one primary, for hiring carriages or other conveyances for conveying voters other than those physically unable to walk, for treating or furnishing any entertainment to any voter.

It enacted that the central committee might establish rules for party registration. It left in force all the provisions of the Act of 1887.

It will be noted that there is no provision in this law by which the citizen who desires to vote can know who is proposed as a candidate for nomination, and no opportunity was given for intelligent inquiry or discussion.

It treated the primary not as an institution in which

every citizen who is a member of a party had a right, but as a mere bit of the machinery of party politics to be entirely in control of the political organization of the party. By its enactment the primary was made the very creature of the organization. It was not only that the officers of the organization were the officers of the caucus, that its place and time of meeting were to be determined by the organizer, as were also the important questions as to how the vote should be taken, but it was entirely dependent on organization outside of itself for any efficiency whatever.

Under this law, it was not only possible for the party organization to make the ticket, but it was certain that some organization must make it. Something must take the place of intelligent public opinion where no opportunity was given by the law for forming such an opinion. If the regular party organization did not direct the making the ticket, some irregular organization, some temporary cabal, some aggregation formed, no one knew how, but generally for some ulterior and unworthy purpose, would control it.

It is undoubtedly true that there has been complaint as to the interference of the party machine in the caucuses of this State in the making of the ticket, and it is also true that there are undoubtedly just grounds for such complaint, but really it was better that the ticket be made by an organization having some degree of responsibility, some tradition, some clearly defined purpose, even though that might not be the highest, than to leave it to some merely incidental organization which had neither any past, nor any future, which lived only for the occasion and was organized generally for the accomplishment of some one particular design, and frequently the securing of some apparently unimportant position, or the accomplishment of some purpose which could not for a moment have suceeded had the purpose been known.

For a long time this law has been unpopular in the State. Under it when the ordinary citizen, impelled by a desire to perform what seemed to him an important civil duty, approached the polls of a primary election, he had proffered to him one or two tickets on which were printed the names of delegates to the convention or the party candidates for the ward offices. Frequently he never had heard of the names printed upon the ticket before, or, if he had heard of them, he knew of no reason why they should be there. That there was a purpose, a something to be accomplished, and that the gentlemen who were really running the caucus knew what that purpose was, he was perfectly satisfied from his experience in politics. If there were but one ticket, as was frequently the case, he knew it was immaterial whether he knew anything about it or not unless he was prepared himself to create a temporary organization which would secure harmony of action as to some other candidate or candidates, and this it was generally impossible for him to do. If he voted it he frequently found he had been supporting men and measures in which he did not believe and for which he would not have voted had he known beforehand what the vote was really for. Naturally he felt as if he had been treated as the ignorant or decrepit are treated when transferring their rights or property they are permitted to touch the pen which others guide.

The conviction has grown and deepened amongst our people until it has become a fixed article of their faith, that the present caucus system in use in the State at large is utterly useless as an instrumentality for exercising their right to make the ticket of the party or elect its delegates.

The public discontent with this system is widespread and has for several years been increasing. Both political parties have again and again in their platforms demanded a change, and men have continued their allegiance to

those parties and voted the party ticket in reliance that these pledges will be carried out and in the hope that they would not be compelled to break their allegiance with a party whose general principles they acquiesced in, of whose tradition they were proud and who had always been regarded by them with sincere affection in order to secure what appeared to them a simple and plain right under the law.

In view of these things the people of this State have a right to demand that one of three things be done:

1. That those who are in favor of things as they are, undertake the task of demonstrating to the people that they are mistaken and that the old law is after all a good law and that there is no real basis for the public outcry against it; or

2. That if it is not a good law, it is because of difficulties inherent in the subject which no law could overcome, and that on the whole it is the best that is possible; or

3. There should be an honest and earnest effort to secure a new law which would remedy the evils complained of.

Considering the number of men who seem to be in favor of the present condition of things, their long experience in what is called practical politics, the interests which have grown up and which depend upon the preservation of the old system, it is strange that those who should be so familiar with the reasons why the old system should be perpetuated have been so backward in defending their views and in giving to the public the advantage of those reasons.

There has been almost no defense by any one of the old system. If a defense can be made, the gentlemen who are opposing the new movement owe it to the people, of whom some of them have been among the recognized leaders, to make that defense. So far, the opposition has

come by way merely of criticism on any proposition for improvement upon legislation because of real or supposed imperfections. I know of no one who has really undertaken to defend the old system on the ground that it was reasonable and righteous.

Nor has there been any attempt, so far as I know, to show that no better law could be enacted, or that the evils complained of were such that they could not be remedied without the sacrifice even of more important rights, or without changes which it would be conceded it would not be wise to make.

In the way of attempts at new legislation, three acts have been passed, each of them local in application. The most important provisions of that which applies to Kent County must be noticed with some particularity.

Primary Law of 1903. This Act was approved March 17th, 1903. It provides that on the eighth Tuesday preceding any election at which members of the State Legislature or officers of the County of Kent are to be elected, there shall be held a primary election in the Townships of Kent County, and the wards of the City of Grand Rapids, at which all the candidates to be voted for at such election, except School Trustees, County Commissioners of Schools and Township officers, shall be chosen by popular vote. It will be noticed that this act has no application to the election of delegates to conventions.

All candidates for elective offices of the City of Grand Rapids, except members of the School Board, shall be selected at a primary election to be held on the third Tuesday prior to the election at which such offices are to be filled.

The primary elections of all political parties are to be held at the same time and place and under the Act and not otherwise, and the person or persons who receives on each party ballot the highest number of votes for the

office he seeks, shall be the candidate of his party at the next election for that office. The judges of such primary elections are appointed and compensated as are inspectors of general election in said City or County, and have substantially the same duties.

Any person eligible by law for an office and desiring to become a candidate shall make and file with the Clerk an affidavit that it is his intent to run for the office therein specified, and in the case of a candidate for representative in the State Legislature, he shall deposit the sum of $5.00, and in the case of other offices the sum of $15.00, with the Clerk to be paid into the general funds of the City or County as the case may be.

It is the duty of the County Clerk in the case of nominations for the County, and the City Clerk in those pertaining to the City, to compile a list on the tenth day before the primary election in which the candidates of each political party are to be placed by themselves, and separate ballots for each political party shall be prepared in writing, which ballots are to be posted in some conspicuous place in his office for the purpose of inspection.

Then follows explicit and particular directions for the preparation and printing of the ballots. Amongst other things it is provided that where there is more than one candidate for an office, the relative positions of the candidate shall be changed in each 100 ballots. The ballots are then to be so arranged in separate piles that any advantage from position on the ballot will be equalized and a proof of this ballot must be placed on file to be open for the inspection of the candidates at least five days prior to the primary election. They are to be delivered by such Clerk to the Chairman of the several Boards for inspection in the same manner as at general elections.

It is declared unlawful to print or deliver these ballots to any person, or in any different manner than that provided by the Act.

It is the duty of the officers, who are appointed under the general election law, to designate the places for holding primary elections; and the proper officer of the City of Grand Rapids and the County of Kent are to give notice of the holding of such elections to the Township Clerk of each Township, and the Chairman of the several Boards of Inspection in said City. And in addition thereto the same notice required by the general election law, or provided by the charter of the City of Grand Rapids for the registration of electors, shall be required and given with reference to all primary elections. And such notice shall designate the office or offices for which cadidates are to be chosen.

Boards of primary election inspectors are to be appointed in the same manner as inspectors of general elections, and the duties are the same as those imposed on like boards under the general election laws of the State, except that the majority of each board shall be chosen from the political party which cast the highest number of votes at the last preceding election.

The provisions of the general election law as to the place and manner of voting are made applicable. And it is provided that the polls shall be kept open from 12 o'clock noon to 8 o'clock in the evening in the City; and from 12 o'clock noon to 6 o'clock in the evening in the Townships.

All persons entitled to vote in any precinct at the next ensuing election shall be entitled to vote in that precinct at the primary election. But no voter shall receive a primary election ballot, or be allowed to vote, until he is first duly registered as a voter in the manner provided by law, and it is the duty of inspectors of primary elections to examine the books of registration and know that each voter is duly registered and entitled to vote before his ballot shall be received.

It is incumbent upon the voter to state to the inspector

of elections, having in charge the handling of ballots, the party whose ticket he desires to vote. Provisions are made for challenging votes, for the numbering of ballots where a vote has been challenged, and for the taking of an oath, in case a challenge is made, that the person offering the vote is a resident and voter, or will be at the next ensuing election, that he is in sympathy with the principles of the party whose ballot he requests, and that he expects to vote the ticket of that party at the next ensuing election.

The provisions for voting are generally the same as at elections.

Copies of the general registration are delivered to the Chairman of the Board of Primary Inspectors to be used at the primary election.

Tally sheets are provided for and the ballots with the tally sheets are to be delivered to the City Clerk, or County Clerk, and are to be canvassed by a board consisting of the Clerk of the City of Grand Rapids, the Clerk of the County of Kent, and the Judge of Probate of Kent County, who are to file the result of their canvass with the Clerk of the proper court, and whose duty it is to notify the successful candidates of their nomination. No name of a candidate of any political party which is required to make nominations under the Act shall be placed upon the official election ballot unless he is chosen according to the Act, except in case of vacancy occasioned by death, removal, resignation or disqualification. In such a case the County or City Campaign Committee of the same political party, or if there be no such committee, that a mass convention may nominate a candidate and except there be no such political committee, then he must be nominated by at least two hundred electors of said City.

It is provided that the candidate or candidates nominated under the provisions of this bill, shall, immediately

after their nomination, select a party campaign committee for their respective offices, one to be chosen from each ward or township in their election district, who shall hold office for two years and until their successors are elected and have qualified. The candidate or candidates shall also select a chairman of their respective campaign committee, whose term of office shall be two years. The members of the committee so selected shall elect one of their number as secretary of the committee to which they belong. Such committees are to direct the campaign of the office that they are selected to act for.

Provision is made for contesting the nomination of any candidate by filing a petition with the Probate Judge within twenty-four hours after the close of the polls. It is the duty of the Judge of Probate thereupon to convene the board of examiners, and provision is made for the production of the ballot boxes upon the investigation which is then provided for. And the provisions of the Act of 1887 for election contests are made applicable so far as possible.

Electioneering while the polls are open or within two hundred feet of the polling place, the offering or giving of any intoxicating liquors, or the drinking of intoxicating liquors within such polling place; the soliciting or receiving, directly or indirectly, money or promise of place or position, or any consideration for a vote or support at any primary election; or the offering of money or reward of any kind, or the violation of any of the provisions of the Act, the refusal to perform any duty thereby enjoined; or the voting or attempting to vote more than once or in more than one election district at the same primary election; or the soliciting of another person to do the same act; are constituted a misdemeanor. And the person convicted therefor shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not exceeding one year.

It was further provided that the Act should not become operative until ratified by the vote of the people at the election to be held on the first Monday in April, 1903.

That the new law is a radical departure from the old method is apparent on a moment's consideration. Under it the separation between the party organization and the primary election is most complete. It makes the primary a recognized institution. It is an election of candidates by the members of the party where they may stand with equal rights and power so far as the law can accomplish that result. It secures to the citizen an opportunity to know in advance who the candidates for the several offices are, to consider their ability, their position on vital public questions, their general fitness for the office, and for the development of an intelligent public opinion upon these subjects.

Since the time when by popular vote the people of Kent County determined that this law should be put in force, there have been two city elections and one Presidential election.

At the City primaries of 1903, the candidate for mayor received the majority of the vote at the caucus, and the results were satisfactory. It was at this election that the former mayor under whose administration what has been known as the water scandal developed was defeated. The candidate of the primary caucus died, to the universal regret of the people, before the election, and was replaced by another candidate who was satisfactory to the citizens. Had the candidate nominated lived, there is no reason to believe but that he would have been elected by a large majority. In other words the first primary under this law had succeeded in expressing satisfactorily the will of the party.

At the primaries for the City election of 1904, the vote for the candidate of the dominant party was 7128

divided among four candidates; of these the highest number received by any one was 2493, the others received respectively 1783, 1406 and 1246.

It was thus apparent that a majority of the voters had divided their votes among three candidates, and a minority candidate had won.

In the election which followed the candidate of the caucus was beaten and this was accomplished by a union of the Republican votes with the Democratic. The average Democratic vote at the election was between 4000 and 5000; while the Democrat candidate for mayor received 6953 votes, and this vote largely in Republican precincts.

There is no question but that the primary here failed to represent the will of the majority of the party; and it illustrates one of the most serious defects and the greatest danger of the new system.

It was naturally insisted by the opponents of the new law that, if the voters for the different candidates had been represented by delegates at a convention called in the usual manner, there would have been an opportunity for the majority to unite on some one candidate who would, perhaps, not have been the first choice of all, but who would have been so satisfactory to all that he would have carried the vote of the party with him.

To this it is answered that in the experience of conventions it has proved at least equally probable that the delegates would have gone to the candidate having the larger number of votes as that they would have agreed among themselves on one candidate, which experience has shown is a much more difficult and unusual thing to do; that in this particular case there is little reason to believe that the action of the convention would have differed from that of the caucus. In seven of the twelve wards the successful candidate of the caucus received the highest number of votes. There is no reason to believe

that the people who voted for him would not have voted for his slate of delegates or that they would not have been elected, so that in the start of the convention he would have had a majority. In the other five wards one candidate received the highest number in two, and the other in three, while one candidate who received over 1200 votes did not carry any ward at all.

The difference so far as we can see would have been that by the new method the popular strength of each of the candidates were actually determined, and this in itself is frequently an important result of an election.

One result was somewhat peculiar. For the first time in his life the citizen found that he had no one to blame for such a miscarriage but himself. The law was one which he voluntarily adopted and in which he thoroughly believed. The result was one which might have been anticipated and which he had taken no means of guarding against; and he had forced upon his attention in a most emphatic way the responsibility which he had assumed and the necessity of in the future guarding against what so far as we have gone appears to be the greatest weakness of the new law.

At the November elections including the members of the Legislature, Circuit Court Commissioner and Coroner, 16 offices were to be filled. For these offices 47 candidates qualified and were voted for.

The period of ten days which intervened between the expiration of the time of the filing of affidavits and the day fixed for the holding of the primary was spent by the candidates in electioneering. Here old methods had to be modified or abandoned. The men who had formerly controlled conventions and determined nominations were to a large degree legislated out of power. The campaigns of the different candidates were along personal lines. A large personal acquaintance and general popularity told a great deal but had to be supplemented

by active exertions of the candidate, at least in a city as large as Grand Rapids. Endorsements of the candidates couched in language more or less laudatory and signed by individual citizens, friends whom the candidates felt would most likely influence the opinion of other voters, or who the people would deem had some peculiar reason for being able to judge wisely of the qualifications of the candidates, were secured and published in the daily papers. As a rule, the party papers themselves did not come out either for or against individual candidates. They pursued the same course which they generally pursued as to candidates for nominations which were to be made by conventions.

Meetings were held at different points in the city at which the several candidates, or as many of them as desired to do so, were given an opportunity to address the voters who attended. Here they were called upon to answer questions with reference to the policy which they intended to pursue if nominated or elected. These meetings were generally quiet and orderly and seemed dominated by the American spirit of fair play and the desire to give every man a fair hearing.

As an illustration of the temper of the people, it should be said that two questions were locally deemed to be especially important. One of them was the question of the enactment of a general primary law. While there was a difference of opinon as to the extent of the field of operation of this law, there was no difference of opinion manifest in the people at large upon the question that there should be a general law somewhat similar in principle to the one now in operation in our city.

So far as we could judge it would have been impossible for any candidate to have been nominated who did not publicly endorse this popular view.

Another question not so publicly discussed but still felt to be one of great local importance was the question

whether the prosecutions against those engaged in what is known as the water deals should be continued. Whether the impression was just or not, it was a very general impression that the continuance in office of the prosecutor who then occupied the position meant the continuance of the prosecutions, and the election of his opponent meant the discontinuance of these prosecutions. The litigation had been attended with great expense and there is no doubt but that there was a strong feeling upon the part of some that they had gone sufficiently far. The vote at the caucus by the selection of the old prosecuting attorney indicated that the people were determined that the prosecutions should be still carried on.

In addition to the endorsements above mentioned, which were somewhat formal in their character, interviews with the friends of the several candidates calling attention to their peculiar fitness and the reasons why they should receive the vote at the primary were published.

So far as to the press furnishing a medium for disseminating these statements and endorsements, it was undoubtedly influential, but the fact that it was understood that a given newspaper was for or against the candidate did not seem to have great weight with the voters. This may have been due to the fact that the press seemed to be unwilling to use the advantage of its position for expressing preference as between the candidates.

As a whole the result was satisfactory to the people, although it was apparent that the law had defects that should be remedied. The working of the principle met the public approval. The choice of candidates would, I think, compare very favorably with those which conventions have formerly made. There was almost no public discontent. Even those whose friends had been disappointed cheerfully acquiesced in its justice. It would be useless to say that money was not used at this

election, but there were some of the candidates who did not use money who stood high at the polls, and the friends of the new movement claim that if money was used, it could not be as effectively used under the new law as under the old, and that the power of money to influence an election at large is inversely as the number of people who have to be influenced.

It may be said also as to this campaign that never had the character and qualifications of candidates for office been so generally discussed, with so little public excitement by so large a number of people, as in this election. The consciousness that it was the duty of every citizen to know something of the candidate whom he was to vote for was widely spread among men who generally did not participate in the caucuses. The sense of public responsibility for the result seemed very much greater than usual.

Turning from general to practical suggestions, a few things deserve to be noted, and first certain defects in the operation of the law:

(a) The danger especially where one party is largely in the majority and where the opposition has only one candidate, that the members of the other party will cast their votes for the candidate of the opposite party. This they can do in perfect safety, as they know that the candidate on their own ticket will be nominated anyway and that their votes will not affect that result.

In the spring election of 1904 to which we have referred, the democratic vote for City Attorney, a gentleman of character and fitness for the position, who ran against one of the best candidates on the Republican ticket, was 4840 votes. For mayor the entire Democratic vote of the city at the primary was 905. It was publicly charged that many Democrats voted at this caucus as Republicans. The provisions of the act are entirely inadequate to prevent this abuse. There is no

party registration, nor is it made the duty of the inspector to inquire of the citizen voting to what party he belongs, nor is it made an offence for the member of one party who intends to vote at the next election the ticket of his own party to vote the opposite ticket at the caucus. The provision is found on section 12 of the act and is as follows:

"The elector offering to vote shall receive the ticket "or ballot of one political party. It shall be incumbent "upon him to state to the inspector of election having in "charge the handling of ballots of the electors, the ticket "he desires."

The right of challenge is given, on the ground that the voter is not a member of the political party whose ballot he received, but this is a privilege rarely exercised and is utterly inadequate as a safeguard.

In the caucus of September, 1904, the candidate for the Legislature who received the highest number of votes at the caucus ran considerably behind at the election, although there was no reason on account of anything that had occurred between the caucus and the election for such a change, and it was openly charged that the difference in his vote arose from the fact that he was very widely known and by reason of his personal popularity had received a great deal of assistance from the members of the other party at the caucus which he did not receive at the election. In many cases the insignificance of the opposite vote at the caucus and the largeness of the vote of the Republican candidates would indicate that many Democrats either stayed away from the polls almost entirely, or else they voted for candidates upon the Republican ticket.

There is no question but that the statute should be amended in these respects, both by requiring a declaration of the person voting as to the party to which he belongs and a party registration or enrollment.

The Supreme Court has already held void the provision restricting the number of candidates to the names of the persons who apply, make affidavit and pay their fees. An amendment has already been proposed looking to the nomination of candidates by petition. The number of petitioners to be determined either by a percentage of the votes cast at the last election or by a fixed number sufficiently large to render it difficult for any one who has not strong enough personal backing to give him a chance to succeed at the primary, becoming a candidate.

It has also been suggested that the primary election be held upon the days provided by law for the registration of the voters. No objection has been offered to this course. It would tend to simplicity in the system and it would lighten the burden of the voter.

The law should be amended so as to permit the selection of delegates for political conventions at the same time as the candidates for office. At the present time these delegates have to be selected under a special act at a different election. The fact that the citizens at large are not so generally interested in the question as to who shall be delegates, as to who shall be candidates for office, renders the securing of a large number of these citizens at this primary election very difficult. It imposes the burden of an additional primary upon the citizens for which no adequate reason has been given. Objections to the old method apply as forcibly to the election of delegates as to the election of officers.

It is claimed that the law is not popular with candidates. This is frequently but not uniformly true. Those accustomed to old methods naturally prefer them. The qualifications of successful candidates under the two methods are somewhat different.

Men who seek office under the new system understand that they must get out amongst the voters. Many candidates feel themselves at a disadvantage with others

in the qualifications necessary to do this. With many more it is distasteful. The public do not feel interested in the candidate's managers. They want to know him. He answers their inquiries, announces his position on live questions. He must in some way lead the people to favor his candidacy by securing their belief that he is more worthy of his position than his competitor. On the other hand, it is insisted, and it seems to me with great force, that in the long run candidates will be stronger and more independent of improper influences if they learn to come into closer contact with the people, to ascertain their views and wishes, so as to be affected by public enthusiasm and on the other be made to feel that they are responsible to the people themselves.

Whether this is true or not, it must be confessed that in this regard the new system is more closely analogous to time honored methods than the former one. It is a return to the older usages when the strength of a candidate was to be found in his relation to the people.

The most important defect in the law has already been alluded to, and that is that where there are in the predominant party several candidates, the votes will be scattered, so that the candidate who would be least acceptable to the majority of the people and least probable to unite their votes at the polls will be elected. To cure this evil various projects have been discussed. One, that there shall be a second caucus in which only the two highest candidates shall be voted for. Such information as we have received from the States of Mississippi and Florida where this condition is in actual operation does not create confidence in it as a convenient and practical scheme.

Another suggestion is that where there are several candidates any one desiring to do so may vote for second choice on the same ballot at the same time. It is claimed that in this way, if there was not a majority for any

candidate on the first choice, he may be nominated under the second choice when he would thereby receive the votes of the majority. We have no knowledge of this suggestion ever having been reduced to actual practice, although that may have been done. The danger will probably diminish as time is given between the nomination and the primary, because there will be given the greater opportunity for public sentiment to crystalize upon some one or two of the candidates. It will be noted that the most striking instance where this defect has occurred was in the municipal election, and at municipal elections the time between the caucus and the election is much shorter than in the case of County and State elections.

The question will naturally arise as to the comparative facility with which good candidates can be secured under the new and the old system. So far as we have gone there has been no dearth of good men who are willing to submit their claims to the votes of their fellow citizens, and the general character and fitness of those who have offered themselves will compare very favorably with the candidates under the old regime.

So far as we have gone in our history, party organization has been found a necessity. What has been the effect upon party organization of the new law? The answer will depend largely on the view that is to be taken as to the purposes of party organization. If its legitimate purpose is that a comparatively few persons shall impose their will in the place of the popular will, then the new law has had a very disastrous effect upon party organization, because under it that has become a far more difficult thing to accomplish. But if it is meant that the purpose of the party organization is to carry into effect the purposes and desires of the men who compose it, then political organization is not only not weakened by the new method, but it is greatly strengthened by

it. By it the party organization acquires a position of great importance and interest and a stronger holding upon the affections of its members, because in a broader sense than ever before, it is the instrument by which those acting together from common tradition, impulse and belief can alone accomplish the results which they seek. The complaint in the past has not been that the average citizen cared too little for his party. When the will of the party has been known, he habitually submits. He is, perhaps, a little too much inclined to permit moral questions even to be determined by the vote of the majority. The growing weakness of the party ties complained of may be charged directly to the fact that its members do not feel that the purpose of the party organization is to carry out and effectuate the views of the majority of the party. He does not feel that it is the voice of the majority to which he is called to obey. A large part of the defection from the party organization arises from an attempt to wrest the control of the party from what is believed to be a minority of the party. It is a struggle not against the party or its principles, but against its management.

We may be permitted to suggest that if able men who are not only experienced in party politics, but who also were genuinely interested in carrying out the purposes of the party, would try to lead and not manage, they would have behind them that enthusiasm which real leadership creates. It is only human nature that men should be willing to be led, but should strenuously object to being managed.

In discussing the effect of the new legislation it is wise, as nearly as possible, to draw the line between what has been actually accomplished and what is yet in the experimental stage simply. It is too wide a generalization to suppose that because the present law has on the whole worked satisfactorily in one county, it would, therefore, work well as applied to the whole State. Con-

ditions new, different and untried would arise there. That personal acquaintance with the candidates and the comparative ease in becoming acquainted with their qualifications which exist in the smaller community would be absent in larger. If there were one or two candidates well known in the State, there is no reason to believe that the system would not work well. But with every county having one, if not more, favorite sons who are almost unknown to fame beyond the limits of their own county, the result might be chaotic. What can be said is, that with amendments to the law which may be found necessary, as it is tried, with a greater experience of its operations amongst the citizens themselves, there is room for hope that this wider field may yet be brought within the operation of the same principle.

Nor, so far as I know, has anything occurred that would lead to a belief that the State conventions as the great party council, where adverse views of different wings of the party are to be harmonized, where the policy of the party is to be unified, can be dispensed with under the new system any more than in the old. What should be accomplished is that, to this convention, there should be given more of a deliberative character.

Upon one thing we insist, that we have gone far enough to show that the men who compose the State conventions should be elected in the same way as the officers are nominated—by the people—and should be directly responsible to the people and to no one else.

Turning now from that which is experimental or negative in its character, let us consider one or two things which we insist may be fairly claimed to have been accomplished.

1. To the great mass of citizens in our county the law has brought satisfaction and that contentment which comes of a consciousness of being justly dealt with. Under the old system of representation there was a

town in Kent County where 51 men could select the three delegates to which the township was entitled in the convention. There are wards in the City of Grand Rapids which it was not possible at any ordinary time for the dominant party to carry, and which had an equal vote with the largest and most populous words in the city. All this was done away with by the new law. For the first time each citizen found his vote counted one at a party election and no one's vote counted more than once.

Wherever there is so large a majority in favor of one party as there is in Michigan, the real question as to who shall represent the people in the Legislature, or who shall occupy positions of power and honor in the government and who shall determine the policy of the State, is determined in the primaries. Whether he is right or wrong, ever since the law of 1895 went into force the citizens has felt that he has been compelled either to abandon the party in whose general purposes he believed, to whose traditions he was attached, or else vote for candidates whom he felt were not his own choice nor the choice of his party and who he believed would never have been the candidate of the party had there been a fair and full opportunity for the expression of the will of its members.

Now to participate in a primary at which he had an opportunity to vote intelligently for the candidates, to select the candidate for whom he chose to vote, to suffer from no inequality because he did not belong to any particular combination of his party, to have the right to the continuance of these conditions recognized and defended by law and uninfluenced by any other power, was a source of great public satisfaction. It appealed to his justness and fairness. It was like a man who had been for years annoyed with a machine that would not work when he finds one that will.

But the great achievement of the new law was the

extent to which it aroused the interest of the ordinary citizen and secured his participation. At the first municipal election, the number of votes cast at the caucus for the office of mayor was 5556. In the municipal election of 1904 the total vote cast at the caucus for mayor was 8033, and in the general election of 1904, the number of votes was 12497. Of this 9376 was in the City of Grand Rapids as against a total vote of 14286 at the election. 3121 were outside of the city in the county against a total of 6756 votes. Now while a condition in which 12000 votes were cast at the primaries out of 21000 at the election may not said to be ideal, it is such an enormous increase over anything that we ever had before that we have a right to claim that in a most important particular it is a great advance on the old system.

I have endeavored to ascertain the number at the caucuses under the old system, but I have found no method by which they are preserved, but there is no question that anything like the same number of voters ever participated in a primary election before.

We think the importance of this achievement is very great. For years we have been told that one of the greatest, if not the greatest weakness, of our government was the inaction of the citizen, his unwillingness to participate in the government of the country through the primaries. Under the new law the citizens of Kent County have shown a willingness to perform this duty and it gives color of reality to the answer which he has always made, when upbraided for his failure to do his duty in this regard, that it was utterly useless with the machinery of the caucus as it stood, for him to attempt to exercise his individual right or perform his individual duty. Taking it for granted that the interest will continue in the exercise of this power, is there any reason to doubt that with the aroused interest, with the new consciousness of responsibility, with the certainty that

the evils resulting from the neglect of his duty, will come back upon him and the community to which he belongs, that he will not continue to perform these duties with increasing care and effectiveness, and that the number of those who continue to do this will continually increase?

Would it not be a most worthy answer to those who criticize us on account of this indifference of a citizen if we were able to say that the great reason why the citizen had failed in his duty was not because he did not have interest or purpose, but because his experience had been that the machine which he was called upon to use was so cumberous and ineffective, was so irregular and eccentric in its operations that he had found out that as a matter of experience his active interference worked little if anything toward the accomplishment of his purpose. That the machinery has been ineffective there can be no denial. Consider how dazed and helpless the average business citizen is when he undertakes to accomplish anything in the way of politics. If the new system should tend to answer this question as we have suggested, if it should tend to show that the citizen will perform the duties imposed upon him when he finds that performance will aid to effect his purpose and the purpose of those who believe with him, may we not believe that with increased experience he may perform them better and more wisely and that the number of those who so perform them will continue to grow? If he can do this, there is no man amongst us who would not say that it would not be a great achievement. If the new system does not accomplish a perfect work in this regard, if it is only a step in the journey, and if we have reason to believe that, having taken this step, other steps will become easier, is it not worth while to take this first step away from acknowledged evils on the way to that goal which commends itself to every honest citizen?

At the commencement of this discussion the question

was stated to be, "is the Kent County primary law a step in the right direction, is the principle one that is capable of further and extended application, and if it is a step in the right direction, is it so long a step as to be a source of encouragement?" Because it places the responsibility of the primary where all the traditions of our government places it—upon the people,—because it furnishes the most convenient instrument yet tried by which the people can conveniently perform the duty which that responsibility involves; and because the people themselves, having a voice in the choosing, have not only adopted it by their votes, but have also adopted it by a more general and effective use than any other device which preceded it, because at least of these amongst many other things which might have been said, we think those questions should be answered in the affirmative, and that this law must be considered a step and a long step in the right direction.

FORTY YEARS OF DIRECT PRIMARIES

BY ERNEST A. HEMPSTEAD, EDITOR OF THE CRAWFORD JOURNAL, MEADVILLE, PA.

Political parties are a recognized necessity in every constitutional democracy. Wherever the masses are the source of political authority, they divide naturally upon various questions of foreign and domestic policy, generally into two greater and several lesser parties. One or the other of the great parties, either alone or in combination with one or more of the lesser, is always in control of the government. Not the whole people, then, but a part of the people—a party—really rules, and a government is no better than the party which is in control. If we would have the best government possible, therefore, we must look closely to the foundation, and in every democracy the foundation rests in the party caucus or primary. To whatever degree this represents the best thought, intelligence and aspirations of the voters themselves, responds to their desires and carries out their wishes, to that degree it is a valuable, an indispensable adjunct of government. It is a perplexing problem how to make government truly representative of public opinion, clean, efficient, economical and just, and one not to be solved by limiting the participation of the masses, for the surest way to deaden is to disuse. Whatever, then, promotes the participation of the masses in political life, keeps fresh their interest in political affairs, makes them acquainted with the minutiæ of town, city, county and State government, is worthy of the most careful cultivation. These and other important advantages are claimed for the popular vote, or direct primary plan of making nominations and of governing party

organizations, which was invented by the Republican party of Crawford County, Pennsylvania, in 1860, and has been used by them without interruption for upwards of forty years.

HISTORY.

It was in 1860 that the Republican party of Crawford County, less than six years after its organization, inaugurated the plan known as the Crawford County direct primary system. Although the party had twice carried the county, formerly Democratic, and was seemingly well entrenched in power, its young, vigorous and, in the main, well-led organization had experienced the difficulties which beset all successful political parties. What those difficulties were are clearly set forth in the following brief resolution, offered by Dr. C. D. Ashley in the Republican county convention of June 20, 1860:

WHEREAS, In nominating candidates for the several county offices, it clearly is, or ought to be, the object to arrive as nearly as possible at the wishes of the majority, or at last a plurality of the Republican voters; and

WHEREAS, The present system of nominating by delegates, who virtually represent territory rather than votes, and who almost necessarily are wholly unacquainted with the wishes and feelings of their constituents in regard to various candidates for office, is undemocratic, because the people have no voice in it, and objectionable because men are often placed in nomination because of their location who are decidedly unpopular, even in their own districts, and because it affords too great an opportunity for scheming and designing men to accomplish their own purposes, therefore

Resolved, That we are in favor of submitting nominations directly to the people—the Republican voters—and that delegate conventions for nominating county

officers be abolished, and we hereby request and instruct the county committee to issue their call in 1861, in accordance with the spirit of this resolution.

This resolution was adopted with but two dissenting votes in a convention of eighty-eight delegates representing forty-four election districts. The system thus demanded was formulated in 1861 by a sub-committee of the county committee, and adopted by the full committee, of which the Hon. John W. Howe, an ex-member of Congress, was chairman. By popular tradition he was its real author. The rules thus put into practice, with a few amendments, have ever since been in use by the Republican party of Crawford County, although they were not formally passed upon by the voters of the party until fifteen years later. It is rather odd that these rules, providing for a popular vote system of making nominations, should have been ordered put in force by a delegate convention, and drawn and put in force by a county committee, without being referred to the voters themselves.

The rules adopted at that time provided for the nomination by popular vote of all candidates, duly announced for at least three weeks in the newspapers, the voting to take place at the regular polling place in each district between the hours of 2 and 7 p. m. on the day selected by the county committee. The voters of the party who have assembled in each district at 2 o'clock choose one of their number for judge of the election to be held, and two persons for clerks. When the polls close at 7 o'clock, the board counts the votes cast, and on the following day one member, usually the judge, takes the return to the convention at the Court House in Meadville. Here the returns from the entire county are tabulated, and the result announced by the president of the Board of Return Judges, the person receiving the highest number of votes

for each office being declared the nominee of the party for that office.

For many years each candidate furnished his own ballots. About fourteen years ago the candidates for each office co-operated, printing all their names on one ballot, with instructions to the voter concerning how many were to be voted for. For the past twelve years the chairman of the county committee has printed ballots containing all the names of all the candidates announced according to the rules, grouped according to the offices, the voter erasing the names of all except those for whom he wishes to vote. Thus, without either act of the Legislature, or even a rule of the party, but by the natural process of evolution, a satisfactory solution of the ballot question was reached, and an Australian ballot adopted before its general adoption for regular elections.

The rules now in use are but slightly changed and in minor matters only from those originally adopted. Early in their history it was found necessary to limit strictly participation at the primaries to those either known to be Republican voters, or willing to pledge themselves thereafter to vote the Republican ticket; to require the use of ballot boxes (a hat or an open table serving in some places for many years); and to require lists of voters to be kept and brought to the convention of return judges, in order that in case of dispute and contest it might be possible to determine whether voters not Republicans had participated, or whether there had been fraud. To guard against fraud and the participation of other than the Republican voters, an amendment was also adopted, later, limiting the number of votes which might be lawfully cast in any district at a primary to the number cast by the party at the last preceding presidential election, making allowance for voters who had come of age since that election, and providing for the reduction of the vote pro rata among all candidates in case of

excess. To the credit of the party it has not once been found necessary to enforce this amendment. The practice of "ringing in" Democratic voters or voters of other parties, stopped from the day it was made unlawful.

POPULAR WITH THE VOTERS.

Two opportunities have been given the voters of Crawford County to return to the delegate system. In 1876, after a very full discussion by the press, the system was retained, receiving 1,585 votes; the Clarion County system (the Crawford County system with slight modifications), 696; the representative delegate system, 533. The two popular vote systems received over eighty per cent of the vote cast. Not satisfied with this result, the friends of the delegate system asked for another test, and in 1879 it was made. The verdict was still more emphatic, 1,945 votes being polled for the retention of the direct primary system as against 416 for the delegate system. For the past twenty-five years no attempt has been made to supplant it, and it will doubtless endure until such time as Pennsylvania shall by general law adopt the direct primary for all nominations for all candidates of all parties.

So satisfactory has the system proven in Crawford County, that in 1888 it was adopted by a nearly unanimous vote by the Republican party of Meadville,, the county seat, a city of 10,000 inhabitants, for all ward and city nominations, and has been continuously and successfully in use since.

A very instructive and valuable comparison may be made with the delegate system, which is still employed by the Democratic party of Meadville and Crawford County. In the primaries to nominate candidates for mayor, city treasurer and city controller of Meadville, held in January, 1901, 676 Republican voters participated. At the

subsequent municipal election in February, the average Republican vote was 900, showing that seventy-five per cent of the Republican voters who took part in the general election, took part in the primaries for the nomination of the candidates for whom they were to vote. The Democratic primaries were held a few days later and under the delegate system. Only 117 voters attended these primaries or ward caucuses, the distribution being as follows: First Ward 18; Second Ward, 22; Third Ward, 50; Fourth Ward, 27. At the subsequent election the Democratic vote in the city was 820. But 14 per cent of the Democratic voters participated in the party primaries under the delegate system, while 75 per cent of the Republican voters participated in their primaries under the Crawford County system. The city is a close one politically, the outgoing mayor and other city officers being all Democrats. There was fully as much incentive, therefore, for one party as for the other to attend the primaries, the chances of carrying the election being nearly equal. This is not an exceptional comparison, but represents fairly the participation of the members of the two leading parties of the city and county in the nominating elections, under the two systems the direct primary, and the delegate system.

IN A CONGRESSIONAL DISTRICT.

In 1887 the system was adopted by the Republicans of the Twenty-sixth Pennsylvania Congressional district, composed of the counties of Crawford and Erie. It has given entire satisfaction and is still in use, there having been no change in the boundaries of the district since the direct primary was adopted. It has resulted in an average attendance at the primaries of seventy-seven per cent of the entire Republican vote of the district as cast at the subsequent general election. Crawford County

had theretofore been part of a district using the conferee system, Erie County of a district using the representative delegate system. The conferee system gave to each county constituting a Congressional district three conferees or delegates, who were generally the personal choice of the candidate who carried each county. These conferees would meet, vote for the candidates of their respective counties, fail to nominate, adjourn again, and so on until perhaps some arrangement was fixed up bteween the candidates themselves, the proper order given to the conferees who, like puppets, voted as ordered, and the nomination be made at last. Occasionally arbitrators would have to be called in or the decision would be delegated to the State Committee of the party, and not infrequently no nomination would result, and two or more candidates would claim to be "it," with the result that the opposition would win over the divided party at the general election. I have personally attended many of these district conferences, as a looker on, and never knew of one that was not followed by crimination and recrimination, or charges of barter or sale, and they became such a stench that their abolition became necessary to party salvation.

Erie County, the other member of the present district which has successfully employed the direct primary at eight congressional elections, or for sixteen years, had been a portion of a district in which the representative delegate system was used. The district convention consisted of nearly 200 delegates, and the cost of their railroad fares and entertainment had to be born by the successful candidate, with the result that only men of considerable wealth could afford to enter the contest. Occasionally these large conventions could or would make no choice at the first meeting, and a second meeting would be held, doubling the cost of the nomination to the successful candidate. The expense of conducting a canvass first in one or more counties to secure the election of

delegates to the district convention, and then of the meetings of the convention itself, became a great burden to candidates.

The decision of the party leaders of the new district, formed in 1888, to have all nominations decided by the voters of the party themselves by ballot, came as a great relief to the Republicans of Crawford County, who had become wearied by the scandals and dangers to party success of the conferee system, and to the Republicans of Erie County, who had thoroughly tried the representative delegate and district convention system, and found it sadly wanting in many respects, and burdensome to people and to candidates. The Republican voters of these two counties would feel disposed to ask for a commission in lunacy for any man who would propose a return to either of the old systems. The new system has been completely vindicated by its use. The office of representative has come to be recognized as a district, not a county office. The lists are open to any candidate, and the necessary expenses of conducting a campaign for the nomination are within the means of men of moderate wealth. There are no longer drawn out contests—instead, on one day, within a few hours, the whole question is settled by the great mass of voters interested—what is left is the mere counting and tabulating of the vote and declaration of the result. Every successful candidate has received a clear majority of all the votes cast, not one having been nominated by a plurality. The question of whether the direct primary will successfully replace the delegate system for congressional districts can be answered most emphatically in the affirmative, if our experience in this Pennsylvania district is worth anything.

MERITS OF THE SYSTEM.

The distinguishing merit of the direct primary system is that it promotes the participation of the masses of

voters in political life and encourages them to take into their own hands the management of the party organization. The system has been in use for forty-four years in the county of its origin, sixteen years in the city which is the county seat of that county, and sixteen years in the Congressional district of which that county is a part. For all these years, omitting only those in which there were no contests whatever, or contests over such minor offices as county surveyor (no emoluments), or jury commissioner (salary only $150 a year), and including all years in which there were genuine contests, I find that the lowest percentage of the entire party vote ever cast at a contested county primary was forty-four per cent, in the year 1900. There was no contest over the nomination for Congress in the district, and none for delegates to the National or State conventions (all delegates to National and State conventions are also chosen by direct vote), and rather a languid interest in the nominations for the lower house of the Legislature and jury commissioner, because there was a well founded belief that there was only a fair prospect of electing the candidates to be chosen. The next lowest percentage was in 1862, the second year the system was used, when fifty-two per cent of the vote cast at the succeeding general election was cast at the primaries.

The average representation at the primaries for thirty-one years is 73 per cent. The average of the sixteen highest years is 84 per cent; of the fifteen lowest years is 61 per cent. I question if anywhere else in the country during the past forty-four years under any other system, so large a percentage of the voters have regularly participated inthe party primaries or caucuses.

Other advantages of the system are:

1. To a large extent it makes difficult the control of primaries by a boss or a machine—not altogether impossible, I frankly admit, but to a large extent. Some of

the plans of the bosses to control nominations carry, generally, when they are in line with public sentiment, and should carry. Often, however, in spite of the utmost endeavor, they fail. Log rolling or combining of forces by two or more candidates, or leaders of different districts, as in the delegate system, is next to impossible. The time between the date when announcements must be made and the date of the primaries gives all candidates, their friends and supporters, ample opportunity to learn of the proposed trades and dickers, and to frustrate them.

2. Changing the results of primaries by manipulating or buying delegates after their election is avoided. The return judges simply carry the returns to the county convention where they are computed and the results declared. They have no vote as to candidates unless there be a tie.

3. From thirty-three years' observation of the workings of this system at close range, I believe it results in the nomination of more capable and efficient candidates for office than does the delegate system, which has been employed by the opposition party during the same period.

4. The purchase of nominations by men of wealth has been stopped entirely in the county and district. It is no longer possible to put the money in the slot and draw out a nomination.

FAULTS OF THE SYSTEM CONSIDERED.

The faults of the system remain to be considered. It is alleged by those who are opposed to it that:

1. It weakens the party which adopts it in those districts in which the opposition continues to use the delegate system. If both parties would use it, these objectors maintain, it would be fair; but where one party uses the popular vote plan, with the chances always present that

nominations will not be fairly distributed geographically, and the other party uses the delegate system, holding its primaries later, the latter can take advantage of errors of this sort which are unavoidable under the direct primary plan. This is a very trivial objection and one which actual use does not justify. The tickets of the Republican party, which has used the direct primary plan for forty-four years, have been as well distributed as those of the opposition parties using the delegate system.

2. It is alleged that it involves an unnecessary expenditure of time and money, as candidates are required, by the necessities of the case, to make a personal canvass of the entire district. This objection to the system is not well founded. The necessary expenses of the one announcement required by the rules, and of a personal canvass, are easily within the means of poor men. Many such have been nominated over men of considerable wealth. It is only when candidates get to spending money freely with leading party workers that the cost grows, and this is not a necessary expense nor is it a fault peculiar to the system. Such expenditures are made under all systems and wherever men contend for political prizes. There is no reason for the greater use of money for proper or improper purposes under this system than under the caucus and delegate system.

3. It is alleged that the system begets fraud and false counting. There has been but one instance in its use in Crawford County of an excess of votes at the primaries. There has been but one prosecution for fraud and in that case the Grand Jury ignored the indictments. The amendment to the rules limiting the vote at the primaries to that cast at the preceding general election has put an end to the grosser frauds of this character. Furthermore, frauds of every known variety are common to all other primary systems. Objections of this sort to the

direct primary come with bad grace from advocates of snap primaries, packed caucuses and conventions controlled by the well-known system of log rolling.

4. Another objection urged against the direct primary is that it gives the cities an advantage over the rural districts. The city voter, it is claimed, being within easy walking distance of the polling place, can vote at the primary without interfering with his business or taking time from his work, while the rural voter, living perhaps several miles from the polling place, must lose half a day at least in order to exercise his right. The result, it is urged, is to increase the power of the city voter at the expense of the rural voter. If the primary election day is accompanied with bad weather, this advantage in favor of the city is even greater. But this fault is not peculiar to the direct primary system. The rural voter labors under the same difficulty if he tries to exert his political power under the delegate system. If he would attend the caucus called to choose delegates to a convention he must go where the caucus is held. And if he does not go, those who do go choose, without his cooperation, delegates who represent him. In our county the rural voters are thoroughly alive to their privileges and attend the primaries in large numbers. The most careful estimate I have been able to make indicates that about 60 per cent of the voters in the townships, 70 per cent in the cities, and 80 per cent in the boroughs (incorporated villages) usually attend the primaries.

5. The gravest objection to the system is that only a plurality is required to nominate, and that therefore a minority may control the nominations. In answer to this objection it may be said that in almost every state in the Union pluralities are sufficient to elect officials, and if to elect, why not to nominate? Hayes, Garfield, Cleveland and Harrison were chosen Presidents of the United

States by a plurality only of the popular vote. In actual practice it has been found that at least 50 per cent of the nominations under the direct primary system have been made by a majority of all the votes cast. Finally, when compared with the other systems, the objection to pluralities is found not to be peculiar to this system. Five or ten out of 50 or 100 voters residing in a district may attend the party caucus and elect a delegate. When delegates are elected there is absolutely no assurance that the result will be that desired by a majority of the people. The delegates themselves may be and generally are chosen by a plurality vote. If three delegates, for instance, run in one district, each representing a different candidate, and one receives 100 votes, another 80, and another 70, the vote of the district in the convention on the earlier ballots at least, will be given to a candidate who received only 100 out of 250 votes cast. If this candidate is dropped on later ballots, the whole strength of the district will be thrown to the candidate who received either 80 or 70 votes out of the 250 cast.

When there are only two candidates for any office, a clear majority for one or the other is, of course, ensured, tie votes being very rare. As I have said elsewhere, when there are three or more candidates, the candidate with the largest vote has, in our local experience of forty-four years, had a clear majority in at least 50 per cent of the primaries. And considering only fair probabilities, it is safe to say that in at least 30 per cent more, if not 40 per cent, the leading candidate, although receiving less than a majority, is the choice of a majority of those voting.

The delegate and convention system, by the process of dropping lower candidates, finally accomplishes a nomination by a majority—of what? Of delegates. But how has the result been accomplished? All who are familiar with the system are only too well aware. Not

a delegate is chosen with reference to his preference for more than one or two candidates to be nominated. The voters of his district may especially desire the selection of one candidate, Smith, for Sheriff, we will say. They elect delegates, therefore, with special reference to the contest for Sheriff. But the delegates may be for Brown for Treasurer, and the voters, if they could express their views on the Treasurership nomination also, would not be for Brown, but for Jones. But Smith, for Sheriff, is from their town or section. He has interviewed them and talked up his merits and the lack of merit or the positive demerits of all the others who would be Sheriff; the voters become enthusiastic for Smith, and ignore all the other contests. Smith goes to the convention with these delegates, and others from his section, altogether forming quite a "bunch." And he is for Smith, first, last, and all the time. Brown and Jones and Robinson and Johnson, candidates for Treasurer, Judge, Representative in the Legislature, Congress, each has his "bunch" of delegates also, each "bunch" elected with reference to one candidate solely. The owners of the "bunches" spar for a while, search out the fellows with the largest "bunches" of unpledged delegates, then get busy, and by trades, dickers, promises of what they will do for (or to) each other, promises for next year and the year after, they finally figure out a majority of the delegates for this man and that, and this is called making nominations by "majority vote," and by the advocates of the convention system is considered superior to the system which enables every voter to make his own choice among the candidates for every office to be filled, because the latter forsooth, makes it possible for a candidate to receive the nomination who lacks a clear majority of all the votes cast.

I do not hesitate to assert that the direct primary is more effective, nine times out of ten, in securing the

real choice of the majority of voters, than the convention system, with its bunches of delegates, controlled by the various candidates, and chosen with reference to their preferences for one candidate only.

No method of direct voting for candidates has yet been devised which makes impossible the nomination of candidates who might not be nominated if balloting could continue until a majority result was at last obtained. This is manifestly impracticable. But one state in the Union, Rhode Island, now requires a majority of the whole number of votes cast to elect. Pluralities are recognized as sufficient to elect in every other state. A majority of the Electoral College is required to choose a President, or, if this fails, the election is by the House of Representatives. But the Presidential Electors themselves may be and often are chosen by pluralities. It is possible that a system of primary voting may be devised which will include the expression of a second, possibly of a third choice by each voter, to be effective in the event that his first choice does not receive a majority. In the meantime, the direct primary plan need not be discarded because it does not always insure a majority vote for the successful candidates, for no other system comes any nearer accomplishing that end.

A brief summary in conclusion:

1. The Crawford County system has been successfully and continuously used in the county of its origin for forty-four years and during that time has been twice approved by overwhelming majorities of the popular vote.

2. After participating in its use for 28 years the Republicans of the city of its origin adopted it for municipal nominations, where it has also been used successfully and with almost universal satisfaction until this date.

3. It has been used with entire satisfaction by the

Republicans of the Twenty-sixth (now the 25th) Pennsylvania Congressional District (composed of the counties of Crawford and Erie) for sixteen years, answering conclusively the objection that it is not practicable in more than a single county or city.

4. Its use has extended to many of the smaller cities and to many counties, both great and small, in Pennsylvania and also to other states. In all of these it has given general satisfaction.

5. It is seldom abandoned when once adopted, and never, so far as can be learned, if fairly tried and adequately protected by statute.

6. Formidable movements are under way in several states to extend its compulsory use by law to all parties for municipal, county and state nominations.

7. Its minor faults are not peculiar to it alone, but are common to all primary systems, and its chief fault, that it permits the rule of pluralities, is a fault of popular government itself, and therefore, as our national experience has shown, is not to be feared.

8. Its distinguishing advantage is that it promotes political activity by those upon whom rests ultimate political responsibility. It must, therefore, be conceded the highest place among the primary political systems now in use. It is not claimed that it is a panacea for all the political evils of the time, or that it may be safely substituted for that eternal vigilance which always and everywhere will be the price of good government. What is claimed for it is that it is the fairest system yet devised for nominating candidates for public office, and that it does promote the political activity and freedom of the masses and thus tends to make better government and better citizens, which is the primary object of government.

Questions frequently asked me are:

"Is the direct primary practicable for a state?" "Will

it be an improvement upon the delegate and convention system for the nomination of Governor and other state officers and United States Senators?" "Should voters be required to state their party affiliations at the polls of the primary election and be restricted to the choice of candidates of the party to which they are most nearly allied or to which they actually belong?"

To the first question my answer is, that we can only tell by trying—experience alone will enable us to satisfactorily answer. The direct primary has been so thoroughly tried, and its value has been so thoroughly proved, that its practicability is no longer open to question for county and municipal nominations. In one Pennsylvania congressional district it has fulfilled every expectation and proven its value. Whether it would work as well in a congressional district made up of a large number of sparsely settled counties can only be determined by actual use. It may succeed in some such districts and fail in others—for populations differ in their adaptability to political institutions. As to entire states, much depends upon the voters themselvs. If they fail to comprehend the greater interests involved in the primary contests, permit the less important question of locality to become paramount, scatter their votes among many candidates because of local pride, or from personal considerations, so that no one candidate has even a decisive plurality of all the votes cast, then the direct primary may easily be a failure if extended to include an entire state within its operations. I believe it will succeed in any State of the Union. The election of last November with its splendid record of independent voting in five great States, showed clearly that the masses there knew what they wanted to do, and had the character and courage to do it. In such states, surely (although we may none of us approve of all the results) the voters generally may be trusted to see the real issues, and con-

centrate their strength upon the representatives of those issues, no matter how many candidates may be in the field. This is the real danger, however, that in so large a field, with so many possible candidates, there may be no concentration of public sentiment, and in the confusion of long lists of names the less worthy may by the old methods renew their control. The possibility of this result must be borne in mind, and those who are responsible for the trial of the direct primary must be on the alert when the time of trial comes. This will, I believe, be found the weakness of the plan—its tendency in a large field to result in the choice of a candidate who commands only a fraction of the party strength.

The results in Mississippi and other Southern States seem to be upon the whole satisfactory, notwithstanding the selection of a Vardaman by a majority of the Democratic voters of Mississippi. It is necessary to bear in mind that in the Southern States the party primary election is the real election, deciding who shall be the officers of the State, the regular election being a mere formality, and calling to the polls only a small fraction of the electorate.

To the proposition, advocated by some, that at State conducted primaries there shall be no questioning of the voters concerning their political connections, that any voter may vote for any candidate of any party, I am unalterably opposed. It will, if permitted, so discredit the whole movement for primary reform that the voters will gladly return to the old plan. It can easily, and undoubtedly will result frequently in the nomination by voters of one party of the least desirable and weaker candidates of another party; as for example, when there is no contest in one party, leaving its members free to take part in the contest in another party. Unless we are ready to give up party organizations altogether, and of course we are not, let us avoid this pitfall. It is designed to

save the feelings of the independent, unattached voter. While glorying in his mugwumpery, he still asks the privilege of helping to control the nominations of a party to which he does not profess to belong. For one, so long as I am a Democrate, or a Republican, or a mugwump, I trust I shall not be ashamed or afraid to acknowledge it, and I should be content to assist in nominating the candidates of the party to which I am at any time attached. This plan of ignoring party lines at primary elections may work satisfactorily in municipal affairs. For State or National affairs it means chaos.

The question has also been asked if I consider the direct primary a suitable method of nominating judges and other officials who are required to have special or technical qualifications, such as State Superintendents of Schools and State Engineers, and the suggestion is made that it would be better to nominate only candidates for Governor by direct primary. Wherever in Pennsylvania the system has been used, judges have not been excepted but have been nominated as other candidates for public office have been. As able, learned and upright judges have been selected in districts where the direct primary is used as in those where the caucus, delegate and convention plan is still the rule. I see no reason in our experience or from my observation, why any exceptions whatever should be made, and I see this grave objection, that the use of both systems, one for county, district and municipal officials and Governor, and another system for other State officials, will so multiply elections and add so considerably to the civic duties of voters as to discourage them. In practice I fear that the mass of voters would neglect the duty of voting for delegates to State and judicial conventions even though the delegates were chosen at the nominating elections, and that the State and judicial conventions would be more surely than heretofore under the control of corporate and centralized

political interests. I am especially opposed to the idea of excepting judges from the operations of direct primaries. We entrust our lives and possessions largely to our courts, and while judges should be learned in the law they should also be men of independent character, and not out of touch with nor out of sympathy with the masses. I believe the people can be trusted to nominate as well as to elect their judges, State as well as district. Generally, I believe in entrusting the people directly with the power to nominate any official whom it has been found practicable and wise for them to elect.

CRAWFORD COUNTY PRIMARY ELECTIONS.

Compiled from *The Crawford Journal.* *n*=nominated

	1892	1894	1896	1898	1900	1902
Member of Congress						
Flood	*n* 4588					
Downing	865					
Griswold		*n* 4695				
Sturtevant			*n* 6959			
Bates				2731	*n* 3340	*n* 4979
Higgins				*n* 1689		
Clark				409		
	5403	4695	6959	4829	3340	4979
Senate						
Andrews, W. H.		*n* 3081				
Cutler		1614				
Potter				*n* 4752		
Boland						*n* 5049
		4695		4752		5049
Assembly						
Andrews, W. H.	*n* 3987					
Boland	*n* 4112	*n* 3504	*n* 5266			
Compton	*n* 3623	*n* 3382	*n* 5054			
Malinee	2120	1670				
Phelps	1165					
Andrews, W. A. T.		*n* 2730	3624	*n* 3125	1417	
Glenn		2464				
Thomson			*n* 5053			
Calvin			1246	1028	227	
Eckels				*n* 3571	*n* 1619	*n* 2897
Tryon				*n* 2847	1109	
Roschie				1750		
Stevens				1698	695	
Benedict					*n* 1524	
Britton					995	
Ray					*n* 1420	*n* 3030
Emerson						2753
McLane						*n* 2968
Ross						2332

	1893	1896	1899	1902		
Sheriff						
Britton	n 2616		711			
Hoag	1577					
Scott		n 2024	n 2664			
Johnston		1103				
Marshall		1076		1714		
McQuiston		1002				
Chamberlain		636				
Rice		618				
Robinson		568				
Williams			958	n 2246		
Hanaway				1027		
	4193	7057	4333	4987		
County Treasurer						
Cridler	n 3358					
Calvin	463					
Smith, Elbert		n 4973				
Sterrett		1535				
Cease		659	n 2473			
Merrill			1755			
Scott				n 2355		
Lowman				1189		
Hoag				924		
Dunbar				645		
	3821	7167	4228	5113		
Prothonotary						
Slocum	n 3891					
Mars		n 2850				
McKay		2504				
Smith, B. F.		1805	n 2468			
Rose			1744	n 4978		
	3891	7159	4212	4978		
Register and Recorder						
Smith, W. S.	n 2003	n 7052				
Mars	1869					
Shattuck			n 3089	2189		
Youngblood			1173			
Oster				n 2824		
	3972	7052	4262	5013		
Clerk of Courts						
Moyer	n 1504	n 3366	846			
Finney, Jr	1376	1838	1237	n 1900		
Patten	934					
Carpenter		1150				
Bramhall		780				
Clark			n 1250			
Porter			934			
McCutchen				1661		
Chapman				824		
Ellsworth				691		
	3814	7134	4267	4876		

	1898	1896	1899	1902		
District Attorney						
Pickett	n 1713					
Powers	1594					
Davis	468					
Stolz		n 4513				
Hall		2566				
Vance			n 2336			
Smith, S. B.			1905			
Johnston				n 2328		
Kent				1455		
Northam				1369		
	3775	7079	4241	5652		
County Commissioners						
Sayre	n 2501	n 3015				
First	n 1418	n 2302	1123			
Andrews	1340					
Partch	1327	1882				
McKenzie	778					
Hotchkiss		n 2826	n 1372			
Bennett		1405	914			
Tubbs		1196				
Lindsay		1078				
Braymer			n 1527	n 2808		
Merchant			1272	1882		
Wasson			640			
Edson			591			
Adams			328			
Harper				n 2042		
Hemphill				1115		
Waid				872		
Eggleston				781		
	7364	13704	7767	9500		
No. of Votes	3682	6852	3883	4750		
Auditors						
Carpenter	n 2541		n 2336			
Harvey	n 2491	n 3490				
Cotton	2062					
Whipple		n 3579				
Holmes		2721	n 2665	n 4952		
Woodward		2070				
Diggert		1531				
Foster			2131			
Ellis			902			
Free				n 4923		
	7094	13391	8034	9875		
No. of Votes	3547	6695	4017	4737		

	1898	1896	1897			
Coroner						
Hannen	1662	n 7106	n 2349			
Smith, B. F.	n 2123					

	1894	1897	1900			
Jury Commissioner						
Hemphill	n 1103					
Boyd	998					
Smith, P. A.	719					
Wygant	585					
Trace	531					
Snyder	483					
Van Horne	246					
Phillips		n 550	601			
Wasson		467				
Woodward		429				
Waters		260				
Daniels		238				
Sartorius		207	689			
Patterson		151				
Hitchcock		82				
Kaster			n 1057			
Maynard			540			
Cole			349			
	4665	2384	3236			

DIRECT PRIMARIES IN MINNESOTA.

BY PROFESSOR JOHN A. FAIRLIE, UNIVERSITY OF MICHIGAN.

The first experiment with direct primaries in Minnesota was under a law of 1899 applying to Hennepin County, the most populous in the State, which includes in its limits the largest city of the State, Minneapolis. Nominations for city and county officers were made under this law in 1900; and the general results were favorable. The vote at the primaries was nearly 90 per cent of that at the final election; and the character of those nominations, especially for aldermen, was much higher than formerly,—although there was one striking exception in the case of the successful candidate for mayor.

At the session of the State Legislature in 1901 a general primary law was enacted, applying the direct method throughout the State for the nomination of all candidates for local offices, members of the Legislature and representatives in Congress. As originally introduced the bill provided also for the nominations to State officers in the same way; but opposition led to an amendment omitting these from the system.

Under this law the first step in the nomination process is the filing of affidavits by persons desiring to become candidates. These affidavits must state that the candidate is a qualified voter and that he belongs to the political party whose nomination he seeks; but there is no definition of the conditions of party membership required of candidates. These affidavits, with small fees, are filed with the county auditor for local offices, and with the Secretary of State for larger districts; and this

entitles the candidates' names to appear on the ballot of his party.

These ballots are prepared by public officials as for a general election. Under the first Hennepin County law, there was a blanket ballot, with the names of candidates of each party arranged in separate columns. But in the general law now in force there is a separate ballot printed for each party polling ten per cent of the total vote at the preceding election, or for any party presenting a petition signed by ten per cent of the voters.

The primary election is held on the first of the three general registration days, which is seven weeks before the general election. By registering for the general election, the voter becomes entitled to take part in the primary election; and there is no previous enrollment of party voters as in New York and Massachusetts. The principal difference in procedure from that at the final election is that the voter must ask for the ballot of the political party on which he wishes to vote; and if his right to the ballot asked for is challenged, he must swear in his vote. The rule to determine party membership is that the voter belongs to the party "whose candidates he generally supported at the last general election, and with which party he wishes to affiliate at the next general election." Nominations are decided by a plurality of the votes cast for the candidates of each party.

After the primary election has determined the party nominations, independent candidates can be placed on the final election ballot by petition of five per cent of the voters; but no person who was defeated at the primary election can become an independent candidate.

Some of the results of this method of nomination can be deduced by observation and intelligent study of the recorded facts. The briefest examination of newspaper reports show that for most offices a large number of candidates appear. Thus, in Hennepin County in

1904 there were five Republican candidates for county treasurer and four for sheriff, fourteen Republican and six Democratic candidates for two judgeships, six Republican and three Democratic candidates for mayor, five Republican and three Democratic candidates for Congressman. For some positions, however, there were only two candidates, and for county auditor only one.

In most cases where there were numerous candidates the nomination was decided by less than a majority of the whole number of votes, but generally by a considerable plurality over the nearest competitor. Thus the successful Republican candidate for Congressman at the latest primary in Hennepin County received 10,000 votes out of 27,000, his nearest rival having 7,300. The sheriff nominated had 12,800 votes to 6,400 for his nearest rival. But the successful candidate for mayor had only 9,000 against 7,900 for his closest competitor; and the comptroller nominated had less than a third of the total vote, 8,191, as compared to 7,933 for his next rival. On the other hand the Democratic nominees for Congress and mayor had each a clear majority of the whole Decocratic vote.

It is also clear that this method results in a large popular participation in the nomination process, much beyond that under the caucus and convention system. In 1902 the total vote polled at the primaries throughout Minnesota was 175,235. This was 55.7 per cent of the vote polled at the final election in 1900—a presidential year,— and 68 per cent of the vote in the final election in 1902. There was some variation in the relative primary vote in different sections of the State, the largest proportion being in Hennepin County; but the most striking difference was between the large vote of the Republicans (approximately 80 per cent, in Hennepin County 92 per cent) and the small vote of the Democrats (26 per cent of their final vote, in Hennepin County,

however, 65 per cent). The small Democratic vote was explained partly by lack of competition for nominations in the minority party, partly by considerable numbers of Democrats voting for Republican candidates at the primaries, partly by objection on the part of some voters to the provision requiring them to declare their party allegiance in asking for the primary ballot.

Full returns for the primaries in 1904 have not yet been compiled. The figures for Hennepin County show the votes cast at the primaries to be about the same in number as two years before; but this is a smaller proportion of the vote at the final election in this presidential year. The aggregate primary vote in this county was 70 per cent of the final vote, as compared to 78 per cent two years before. The Republican vote was larger, and the Democratic vote not much over half of that in 1902. It is, however, difficult to compare the party votes at the primaries with that at the final election, owing to the extraordinary amount of "scratching" at the latter. The Republican vote at the primary was practically the same as the vote received by the party candidate for Congress; it was larger than the Republican vote for Governor, and about 90 per cent of the Republican vote for President. The Democratic votes at the primary were about one-fourth of the Democratic vote for Congressman, and 80 per cent of the Democratic vote for President.

Further study of the results of the direct primary system in Minnesota requires large knowledge of local conditions and the character of the candidates chosen. And the following statements of opinion and conclusions are presented from men well qualified to judge in these respects:

BY DAVID F. SIMPSON, DISTRICT JUDGE, MINNEAPOLIS.

This plan of a primary election has been thought by many people to solve most if not all the difficulties that have existed in making party nominations that represent fairly the desire and intention of a majority of the members of the party, but familiarity with its operation compels the belief that this plan is not a panacea for all existing evils. The method, however, has certain advantages over the old caucus system. These I would group as follows:

1. It arouses a greater interest in the voters;

2. A very much greater number participate in the primary;

3. It prevents a few people from controlling either the whole or any section of an election district.

In our experience under the primary law we find that about 85 per cent of the voters take part in the primary election. This is perhaps in part due to the fact that the day of the primary election is also the first day of registration for voting at the succeeding election. But the result shows a great superiority in the matter of general public interest aroused over the old caucus system, where the attendance at the caucus varied from a few individuals who desired to be delegates to a convention in case there was no contest, to an attendance greatly in excess of the total number of voters living in the district, in cases where there was a contest over delegates.

On the other hand the system of nominating candidates by direct primary vote has certain apparent disadvantages:

1. It subjects candidates to a humiliating campaign, and to great expense.

2. This deters many good men from becoming candidates, and induces the candidacy, often, of men who are willing to spend money for the opportunity of advertising themselves in the community.

3. The number of candidates is so great, and from

the nature of the offices to be filled the candidates are of such character and standing that the elector has no sufficient information as to the relative merit of candidates, and cannot exercise in many cases an intelligent choice.

4. Because of the lack of opportunity for any great percentage of the electors to get accurate information as to the qualifications of the candidates, a general notoriety, a name that has become familiar, has an undue influence in the success of candidates.

5. Even though the law requires an elector when he presents himself to vote at the primary election to declare his party affiliations, we find from experience that a majority of the minority party will take part in the primary of the majority party.

6. Where there are several candidates for the same office some one is likely to be, and in practice often is, nominated by a plurality vote which is very much less than a majority.

We have become familiar with the working of our primary law in the city of Minneapolis, and in Hennepin County, the most populous city and county in this State; and any one observing the working of the system has been able to observe many illustrations of all the foregoing tendencies of the law.

Our primary law, as now existing, provides that any qualified elector may be a candidate for the nomination by a political party for any office by filing a statement of his intention to be such candidate, and depositing $10.00; and upon the filing of such statement, and fee, his name is printed on the ticket given the electors at the primary as a candidate for such nomination. Formerly names were placed on the ballot by petition, but this became an intolerable nuisance, and the law was amended, and this feature was stricken out.

After a man becomes a candidate on his own motion, he is confronted with the necessity, in a large city at

least, of making his existence known to some 25,000 or 30,000 voters, who theretofore may never have heard of him. Several plans have been devised by experience to do this.

Before a primary election the advertising spaces of the city are freely decorated with portraits and alluring descriptions of the candidates; descriptions and illustrations that rival at times all the efforts of the paid advertisers for patent medicines. The columns of the daily press are used to make the public familiar with the features, and certain selected portions of the lives of the candidates. And last, but not least, the industrious local politician organizes a "club," hires a hall, calls on all the candidates to contribute to the payment of the alleged expenses, and in return the candidates are given opportunity of personally addressing the electors, and endeavor, by their appearance, by what they may say in commendation of themselves, by the distribution of portrait cards, and in other ways, to impress the voters present with their fitness for the position which they desire to occupy.

These methods are not followed by a few of the candidates, but from year to year are more generally followed, as experience teaches the necessity of in some manner trying to familiarize the electors with the names of the candidates.

With such a system prevailing, it becomes apparent that the first suggestion made above, that the system subjects candidates to humiliation and great expense is accurate. And it would follow that many men very fit to hold a public office, and willing to hold such office if it could be obtained in a manner that to them seems proper, are prevented from seeking such an office. And, also, that men who enjoy the kind of advertising and notoriety given are eager to become candidates.

As to the number of candidates, and the impossibility of the elector becoming familiar with the qualifications

of all or a majority of them, it is perhaps sufficient to state that at the last primary election in this city, a Republican voter when he went into his booth to prepare his ballot, had before him 110 names. I do not think any elector has ever claimed to have been familiar with the personality or the qualifications of all the names from which he was so required to select his choice. In the absence of any likelihood or even possibility that a majority of the electors will have definite information as to the qualifications of many of the candidates, it is apparent that any publicity that has made a candidate's name familiar to the public generally will gain for him many votes; even though there has been no connection between the manner in which the public has become familiar with his name, and the qualifications for the office to which he is seeking a nomination.

Observers have thought that the success of candidates in this city at different elections has been accounted for by most trivial circumstances: The president of a corporation doing a real estate business, whose name was used upon the bill boards placed very generally about the city on property for sale, receives a vote out of proportion to any other apparent cause. A man bearing a name that had been associated with the early development of this city, and a name that was thus well and favorably known, receives a great benefit in votes from the name, though he had no connection with the men who had made the name well known. An American with a name that is common to the Scandinavians receives a large vote in the Scandinavian sections of the city. The suggestion is even made that in the absence of any other guide men vote for candidates bearing the voter's name, or the name of any friend. Under this rule the Smith family have an advantage, and by a strange coincidence four Smiths were on our last primary ballot candidates for different offices, and all were nominated.

Mayor Jones, of Toledo, sometime ago advanced the theory from his observation of the working of the direct primary law in Toledo that a man who had been Municipal Judge could get a larger vote at the primaries than any other man. The assertion that was then advanced as a theory has apparently been demonstrated in the last primary election in this city, when two men who were serving as Municipal Court Judges in this city led a large field of candidates for the Republican nomination as candidates for District Court Judges.

At the last primary election in Hennepin County, it was apparent that a majority of the Democrats of the city voted the Republican ticket at the primaries, and took part in the nomination of the Republican candidates. Substantially 30,000 Republican votes and 5,000 Democratic votes were cast at the primaries. If the voters had actually voted according to their party affiliations, the Republican vote would have been about 20,000 and the Democratic vote 15,000.

About 10,000 Democrats voted the Republican primary ballot. And this notwithstanding the fact that the elector had to call for the ballot which he claimed to be entitled to vote, and the fact that the law contains provision for a challenge, and for requiring the elector to make oath as to his party affiliation.

When we also know that a large number of candidates received their nomination as Republican party candidates by less than 10,000 votes, we are met with a peculiar situation,—that it would be possible, though of course not probable, that a man might be nominated as a candidate of the Republican party entirely by Democratic votes.

The chance of a man receiving a nomination by a minority vote is even more serious, in cities at least, in view of the fact that a considerable percentage of a city vote comes from classes not greatly interested in good

government. The floating, irresponsible, lawless element can furnish a candidate to their liking with nearly enough votes to secure his nomination, where the total vote is divided up between quite a number of candidates.

In view of this situation it has been found by experience that it is necessary that the so-called better element have some guide, so that their vote may not be scattered and rendered ineffectual. And different plans have been adopted, more or less successful, to attempt to concentrate the vote of people who desire the same results in government, upon one of several candidates who would stand for that kind of government. The Voters' League has been successful in the matter of nominating aldermen and county commissioners.

For instance, at the last election the executive officers of the Voters' League decided that a county commissioner who was a candidate for re-election should be defeated, because of alleged unfitness for the position. Three or four candidates were seeking the nomination. The executive committee of the Voters' League selected one name and issued its cards and literature to the voters in that district urging them to vote for this one candidate in order to beat the objectionable man. A sufficient number of the voters followed this suggestion, so that the desired result was obtained. It was not claimed by the committee of the Voters' League that at least one other candidate was not entirely fit and competent for the position, but the necessity of combining the opposition vote upon one man was successfully urged upon the voters. In this way an initiative wholly lacking in the primary system itself was supplied by the Voters' League.

It is apparent, however, that this concentration of power to determine a candidate in advance of the primary itself, in the hands of a committee of five men, who simply assume to themselves the function of directing the voters, is not at all in line with the general theory of a

direct primary election, that the body of the electors at large are independently selecting the candidate.

The fact that experience seems to have demonstrated that the successful operation of a direct primary system requires preliminary designation of candidates by some body of men, who assume the right to make such designation, suggest one of the inherent weaknesses of the primary system—that it does lack in proper initiative.

The question is asked whether better men are nominated under the primary system than under the caucus system. I do not think that anybody can fairly answer that question one way or the other. Certain unfit men are nominated, and can be nominated under a direct primary system, that could not be nominated under any convention system. On the other hand certain unfit candidates are nominated under the convention system that could not be nominated under a primary system.

The convention system gives an opportunity for ring and machine politics that is not found in a direct primary system. On the other hand the direct primary system gives opportunity for a well advertised man, who is totally unfit, either because of lack of character or ability, to fill the position, to impose himself upon an electorate that is not familiar with his lack of qualification. In a convention where an opportunity was given for getting information as to his qualifications, he could not have hoped for success.

The press of this city that was at the time the primary law was first adopted unanimously in its favor, is now questioning the adaptability of the law for making certain nominations. While certain features of the law are still recognized as good, the inherent dangers are also recognized, and freely commented on. As one paper put it immediately after the last primaries: We should not only do something to avoid some of the mistakes that are made under this system, but also to avoid the

opportunities for the mistakes which continually threaten us under the system.

The State Bar Association, at its meeting, adopted a resolution asking the Legislature to provide for the nomination of District Judges in a separate convention. District Judges are now being nominated at the primaries. It is the experience and seems to be almost the universal view of the members of the bar, that the direct primary is not well adapted to the selection of candidates for positions on the bench.

Judging from our experience it would seem that the primary system is well adapted to the selection of officers elected in small districts, where the voters are likely to and do know the qualifications of the candidates,—such officers as aldermen in a city. With such an adjunct as an active Voters' League, it would seem that the system was well adapted to the selection of such candidates.

I see no reason why the candidates for any position where the qualifications of the men seeking the nomination would naturally be known to the whole body of electors, might not be made by direct primary vote. This would include such a position as Congressman, or Governor of a State.

On the other hand, at least in cities, for the selection of candidates for positions on the bench, and for such positions as auditor, county attorney, county treasurer, and other positions requiring technical knowledge and training, which knowledge and training is often possessed by men that have not made themselves known throughout the whole district, the convention system seems preferable. But in the convention system, the election of delegates to the convention should be properly held.

The convention system for nominating certain officers, and the direct primary system for nominating others, could be combined. The election of delegates to

the conventions, and the direct primary could take place at the same time. The objectionable features of the ordinary caucus would be entirely eliminated by keeping the polls open during the day, as is now the practice under the direct primary system. The names of the persons who desire to become delegates to the convention could be posted for a few days before the primary, and in voting each elector could designate on a ballot containing the names of all the candidates for delegates, such ones as he favors. This would prevent a few putting through a slate of delegates, and would probably make up a convention of men who fairly represented the district from which they were chosen.

BY WM. A. SCHAPER, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF MINNESOTA.

The greatest advantage our primary law gives the people is the power of breaking the slate of the party boss. No party leader can foresee how a certain candidate or measure will take. He is at sea until the returns are in and then he may find all his calculations upset and his man hopelessly defeated. It prevents an inner ring from nominating party candidates and making the party platform.

The next greatest gain comes from the general interest it arouses among voters. Minneapolis has polled as high as 85 per cent of the registered vote since the law went into operation. It has admittedly encouraged a much larger share of the voters to take an active part in politics. The people feel that a vote counts for something when they have a voice in saying who shall be the candidates. They also force the issue on their candidates, during the primary campaign, by drawing them into discussions. The candidates must take sides. They cannot straddle very well.

It breaks up blind party loyalty. The primary cam-

paign within each party is often as heated as the fight between the parties before the election. In that contest party questions are thoroughly talked over on the stump, sides are taken on men and issues. The voters are led to think about their party as only a means of accomplishing a given end and not the end itself. It often happens that the dislike for some candidate aroused is so strong that people will not support him if they worked against him in the primary. On the whole this stir within the party fold is a good thing. It makes it far more difficult to dupe the voters, as the party "wheel horses" so often did under the convention system.

The drawbacks are also not wanting.

The system is bad where the judges are elected. The system puts a premium on popularity. A thoroughly advertised police judge has the very best chance of defeating a less advertised district judge of far superior ability and worth who is up for re-election. It compels judges personally to advertise themselves and seek and solicit the office.

It puts a premium on publicity. The best advertised name catches the votes. When there are several names on the primary ballot as candidates for an office, the voter will generally select the one he has heard mentioned most and is familiar. The man may be the least worthy of the office, as so often happens. In this way a well advertised name is a great political asset. It gives the man on the inside too great an advantage. Of course this means that a new man must conduct a vigorous self-advertising campaign to get nominated. This is expensive and often distasteful.

It enables one party to nominate a bad man on the opposing party's ticket. The law prohibits a voter from swapping parties between elections, but that part of the law is not enforced and never will be.

It enables a notorious man in office, charged with

crime, to appeal to the people for a vindication. There are several cases on record in this city of that sort.

On the whole the plan is far better than the old convention system was in this State. It is imperfect, like all human institutions. It can be made better or worse with practice, depending on the people who use it.

Without a doubt the addition of a Voters' League—which acts as an information bureau—is necessary to enable the voters to act intelligently. Without a reliable agency to furnish correct and reliable information the action of the voters would in some cases be more favorable to corrupt men than the convention system.

BY PROFESSOR FRANK M. ANDERSON, UNIVERSITY OF MINNESOTA.

My strongest general impression in regard to the latest trial of the direct primary system is that it did not bring out any new or startling results. It seems at all points to have confirmed the conclusions that must be drawn from the previous trial in 1902. Of course, it is possible that I have gotten that impression because I came to some quite definite conclusions in 1902 and it would be natural for me to to expect to see them confirmed at subsequent trials; nevertheless, I have tried to keep an open mind on the subject and I have not yet noticed any results materially different from those which I pointed out in my article in the Annals in 1902.[1] I a quite confident that if anyone were to make a study of the recent trial he would on most points at least come to substantially the some conclusions.

In the way of details the folowing may be of interest:

1. *As to the size of the vote.*

There seems to have been no diminution, but rather

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[1]Annals of the American Academy of Social and Political Science, vol. 20, p. 616.

a gratifying increase in the vote of 1902, which was a large one. The vote in Minneapolis was increased and I understand that the increase was general. It may now be taken as an established fact that the attendance at the primaries will be far larger than anywhere prevailing at the old caucuses and that it will always be considerably over half of the total vote.

2. *As to the quality of the candidates seeking nominations.*

My impression is that a larger number of clean, well qualified men offered themselves as candidates than ever did before. Such candidates appear to be more willing to submit themselves to the voters than to conventions.

3. *As to the kind of candidates who are successful.*

I am more confirmed than ever in my belief that the tendency of the new system is to retain in office the tried and true officials who seeks renomination, the man who under the old system would be turned out "because he had had the place long enough." The "long enough" argument does not seem to be as potent with the voters as with delegates to conventions. The results here in Minneapolis tend to show that the voters in small constituencies, *e.g.,* in the choice of aldermen and county commissioners by wards and districts, show remarkable accumen in picking out for slaughter the men who are or are likely to be "grafters."

4. *As to whether the nominations are properly sueaking party nominations.*

There can be no doubt that as in 1902 many Democrats helped to select the Republican nominees and *vice versa.* Of course this ought not to be, but there appears to be little complaint that it is done for partisan purposes. It appears to be done usually because the Democratic voters are requested to vote as Republicans by men seeking the Republican nominations, and *vice versa.* Un-

doubtedly this feature ought to be eliminated if possible, but nobody as yet has suggested any feasible scheme for meeting the evil. In view of the general success of the new system here, it would be absurd for anyone to urge this abuse as any insuperable objection to the system.

5. *As to the effect of the system upon party organization.*

It is not possible to determine as yet the effect. In both of the last two elections Minnesota has been in the main so overwhelmingly Republican that there has been no opportunity to determine what would be the effect of a poorly balanced ticket, (*i. e.,* such such considerations as nationality, locality and personal following) or one in which some of the nominees were unwilling to incur the expense of a second hard campaign. About all that can be said is that in both of the last two elections Minnesota has shown some remarkably independent voting; and that there are some reasons for connecting this independence in no small measure with the use of the primary system. This much may be said: If there is a fierce contest for a nomination and the campaign brings out and emphasizes real and substantial objection to the man who captures the nomination, such a candidate is less likely to poll the party strength than under the convention system. The election of Lind (Dem.) from the Minneapolis Congressional district in 1902 and the narrow escape of Jones (Rep.) for mayor in 1904 illustrate the tendency. The first case was that of a poor candidate unsatisfactory to the better elements in his party; the second that of an excellent man distasteful to the bad elements in his party.

5. *As to the attitude of the people towards the system.*

After the election two years ago there was in some quarters quite a little opposition to the system, but it now seems to have entirely disappeared. There is considerable talk that the system ought to be amended in some

details, but none of the amendments suggested touch the essential features. I am satisfied that the people of Minnesota are overwhelmingly in favor of the system. There does not seem to be any very strong demand for its extension to State officers, though such a change would probably command public approval if the Legislature should make it. If that change is not made it is quite likely that the system will be made to cover the selection of the delegates to the State conventions. The Dunn-Collins imbroglio seems to have created a great deal of sentiment in favor of that measure.

6. Then there is one point not mentioned in my article in the Annals that I should emphasize now. The direct primary system seems to give a splendid opportunity for Municipal Voters' Leagues and similar organizations to work most effectively. We now have such a league in Minneapolis and in the recent campaign it accomplished some splendid results. It seems very probable that it could not have done what it did under the caucus and convention system.

7. The Minnesota system undoubtedly needs some amendment. The one of most importance is that which would remove the candidates for judgeships, members of school boards, library boards, and possibly a few others from the party tickets, placing the names of all who desire to become candidates upon a separate ballot and without any party symbols. Such a scheme, I believe, would usually secure non-partisan elections to such positions. Of course party organizations might put forward men who were really party nominees under the guise of independent candidates, but such aspirants would probably stand little chance against those chosen by the regular nominating process. If any such scheme as this is advocated care should be taken to confine it to a limited number of positions for which there is a strong sentiment in favor of doing away with partisan selections.

THE NEW PRIMARY LAW IN WISCONSIN.

BY HOWARD L. SMITH, PROFESSOR OF LAW, UNIVERSITY OF WISCONSIN.

In March, 1898, the present Governor of Wisconsin, just elected a United States Senator, addressed the University of Michigan in this city on the subject, then a forlorn hope, of the reform of primary elections. Defeated as a candidate for his party nomination for Governor in 1896 by the instability of delegates who had been elected as his supporters, but who, as his friends asserted, had been unable to withstand the blandishments of a political machine that was opposed to him, his attention was naturally directed to the destruction of that machine. He thought he saw that its strength was rooted in the caucus or primary election and in the convention system of nomination which was so constituted as to be really in the control of the professional or semi-professional politicians, while nominally and theoretically a perfect medium of popular expression. Perhaps no human instrumentalities were ever devised more faultless in theory than the caucus and convention. In an ideal world, among faultless and public-spirited citizens, they must constitute a well-night perfect medium for the expression of the popular will. But the world is not ideal and men are not angels, nor all of them sufficiently public-spirited to perform disagreeable duties. So the problem which presented itself to the chagrined and defeated candidate was to find and secure the adoption of some sort of machinery by which it would be at least more difficult for professional politicians and party bosses to take advantage of the carelessness, indifference, and inexpertness of the unsophisticated and not too enthusiastic voter.

It is to be noted that the convention of whose misrepresentative action complaint was made was itself the fruit of a practically untrammeled and unregulated caucus and convention system. For while there had, at each session of the Legislature since 1891, been legislation looking to the bringing of caucuses and conventions within the pale of the law, and to the regulation of their proceedings, yet such legislation had related to one county in the State only, and had been very rudimentary and imperfect. Moreover, such legislation as there had been, had not taken the form of direct nominations of candidates in the caucuses, but solely that of attempted regulation of the manner of conducting caucuses. But the complaint of the candidate was, not that the caucuses had failed to represent the people, but that the delegates chosen at the caucuses had failed to truly represent the caucuses in the convention. The particular problem suggested, then, by the exigencies of the moment was, not so much to reform the caucus, as how to effectually secure the registration of the will of the caucus. If this was to be accomplished as heretofore through the mouth of caucus delegates assembled in convention, then some way must be devised to make the delegates "stay put." The only alternative was to do away with the convention of delegates altogether, and provide some means by which the voters in caucus could register their wishes directly, without the intervention of any middlemen to be lost, strayed or stolen on the road between the caucus and the nomination.

It was this alternative that the Governor adopted, and as to which he said in the address before referred to, "The fight is on. It will continue to victory. There will be no halt, and no compromise."

The fight has been on ever since without halt or compromise, and has continued to victory. We may now survey the battlefield, and consider the results. The

measure advocated was enacted by the Legislature of 1903, referred to the people at the last general election, and adopted by a large majority. It has yet to undergo the test of actual operation. The fight, throughout, has been pre-eminently the Governor's. Mr. LaFollette has known exactly what he wanted, and refused to accept makeshifts or subterfuges, or half-way measures. A very adroit and successful practical politician himself, he has seen at once through every scheme of substitution and amendment with which the prolific friends of "reform in general," but opponents of all particular measures of reform, beset all schemes of regeneration, and has set himself like a stone wall against them. He flogged a more or less indifferent party into line, imbued it with some of his own enthusiasm, and kept its front to the enemy until the measure was passed. Scores of times, during the campaign of more than six years, his indomitable preseverance alone stood between the scheme and defeat. It is, more essentially than most laws, the creation of one man. It could scarcely be more so were it an imperial ukase. If it succeeds to anything like the extent anticipated by him, he must receive credit for a large measure of prophetic and constructive statesmanship; while if it fails he will hardly be allowed to escape a large measure of the responsibility.

The steps in the progress of the reform are interesting, and not altogether uninstructive. The first bill was introduced in 1897 at the very next session of the Legislature after the convention of 1896. It abolished all conventions and provided for the nomination of all officers at the primary. Only one primary was provided for, which was to be held in September of each year. Probably the weakest features of the bill was that all officers, not only those to be elected in November, but those to be chosen in the coming spring were to be nominated at this one September primary. This provision

was defended chiefly on two grounds. First, economy; second, the greater interest that it was supposed would result in the primary, and the consequent larger attendance. It is probable that these advantages do not outweigh the disadvantages inhering in the mixing up of the largely non-partisan and local spring elections with the fall candidacies, when party spirit is highest. The bill provided that all primaries of all parties should be held on the same day, and at the same place. To have their names placed on the primary election ballots, candidates were to file nomination papers signed by a certain number of electors. Though not so comprehensive in scope, or detailed in its arrangements as some of the later bills, its general purpose and effect were the same.

Instead of passing the law, the Legislature enacted one (Laws of 1897, ch. 312) regulating the caucuses for city and general elections in the city of Milwaukee, and for general elections in the other cities of the State, with a provision that as to city elections, other cities than Milwaukee might adopt the provisions if they choose. In general, the purpose and effect of this law were simply to regulate in some particulars the conduct of caucuses. It did not pretend to interfere with the delegate convention system. Both these and the caucuses were still to be called, constituted, and conducted by the party committees, who were, however, required to give certain notices, and observe certain formalities in the conduct of the caucuses. Probably the most singular feature of the law was that candidates whose names were to be placed on the official caucus ballots were to be proposed at a "preliminary meeting" of voters of the party. At this "preliminary meeting" any person might propose a candidate whose name thereupon went upon the caucus ballot. The attempt to cure the evils of the caucus by changing its name seemed peculiarly naive. The substantive provisions of the law were wholly inadequate,

and no sufficient machinery was provided or penalties inflicted to make effective even so many of its provisions as were substantially good. That it did not satisfy the reformers goes without saying.

The next session of the Legislature came in 1899, and the reformers were ready with another bill (the Bryant bill) resembling in its main features the defeated bill of 1897, but somewhat wider in scope. It provided for direct nomination at the primaries of all State, Congressional, Legislative and county officers by simultaneous primaries of all parties. Previous registration was required as well as a disclosure of the political affiliations of the the voter. The platform was to be promulgated by the State Central Committee, and all expenses borne by the political parties. The Bryant bill met with the same fate as its predecessor, but again the Legislature felt the necessity of "pandering to the better elements," and passed in its place another caucus-regulating bill (Laws of 1899, ch. 341). As this law remained in force up to the last election, if indeed it is not still in force, I shall pause to examine its provisions.

It applies to all portions of the State except Milwaukee County, which was already provided for by the law of 1897. It does not provide for simultaneous caucuses of all parties, but that all caucuses of each party in each county shall be held the same day, which day shall be fixed by the respective county committees. These committees are to give certain notice by publication of the time, place, and purpose of holding the caucus. The apportionment of the delegates to conventions is to be by the party committee. It is made a misdemeanor for any but a qualified elector of the caucus district to vote thereat, and for anyone who has already voted at the caucus of one party to vote at that of another party.

The chairman of the caucus is the chairman of the local political committee, and the secretary and tellers, as

well as the chairman, when the constituted chairman is not present, are to be chosen by the electors present at the opening of the caucus. The fine hand of the political manipulator is evident in this provision. The chairman and secretary shall "on taking their places" take an oath, before whom the law does not provide, and it must in a vast number of cases be true that no one is present who can administer an oath. The law does not provide what officers may be voted for directly at the caucus, but the provisions for the canvass and return of the result are inconsistent with any other candidates being so voted for than those whose jurisdiction is coterminous with or smaller than the caucus district,—that is to say, the officers of towns, villages, school districts and wards of cities, As to all other officers, the function of the caucus under this law is to elect delegates to a nominating convention. There is no official ballot at the caucus. The voting is to be by ballot either written by the voter, or printed on plain white paper, and is to be deposited in a "box or other receptacle" provided by the caucus officers. A poll-list of those who vote is to be kept, and lodged with the city, town or village clerk.

The vote is to be canvassed and returned by the caucus officers. The curious provision is made that in the case of candidates nominated at the caucus "the candidate receiving *a majority of all the votes* shall be declared the nominee of the caucus, and his election shall be certified," etc. Sec 9.

No provision is made for what must be the far commoner case of no candidate having received "a majority of all the votes." Apparently in this case there would be no nomination. Bribery, intimidation and interference of any sort with the operations of the law are made misdemeanors.

While this law bristles with defects, its capital insufficiencies may be said to be three.

I. It does not make the caucus an official function conducted by officers of the State at the expense of the State or lesser municipalities, but leaves it and all its machinery in the hands of the political managers.

II. It provides no official ballot, but leaves anybody to provide any ballot or assortment of ballots so long only as they be on plain white paper.

III. It permits only a very insignificant amount of direct nominations at the caucus, and does not require any.

The requirement of an oath from the caucus officials and the denunciations of certain pains and penalties against the violators of the law are the sort of sop that almost any Legislature will throw to almost anybody whose clamor is so insistent that it must be noticed. This law has been in force ever since its adoption in 1899, and is now about to be superseded by the law of 1903, recently approved by the people's referendum vote. No particular difficulty has been experienced in its administration, nor can it be said, so far as appears, that any particular benefits have flowed from it .

It will have been obvious long before this that this law was not likely to satisfy the reformers. It was followed in 1900 by the election of the chief reformer as Governor of the State. As part, in fact the chief item of his program, a well-considered and far-reaching primary election bill was introduced into the Legislature, but, by reason of factional differences in the dominant party, failed of enactment into law. I shall not linger over its provisions since they neither became law, nor resulted in the enactment of any other law. A much-emasculated bill did pass the Legislature by a small majority, but was vetoed by the Governor as an insincere attempt to head off genuine reform. Another campaign resulted, in 1902, in the re-election of the Governor, and the return of a Legislature more in harmony with his views. As a

result of their deliberations there was enacted in 1903, subject to the approval of the people at the general election of 1904, what I suppose to be one of the most sweeping primary election laws upon the statute books of any State (Ch. 451, Laws of 1903). The approval provided for has been given, and it is now the law, though there is a difference of opinion whether it goes into effect at the spring elections of 1905, or the general elections in the fall of 1906. This law consists of twenty-eight sections, many of them of considerable length and complexity, and I should quite despair of making clear to you by oral exposition all of its provisions within the limits of this paper. But its main purposes, and the principal means adopted to accomplish them can perhaps be be sufficiently exposed within reasonable limits.

To avoid repetition and an undue trespassing upon your patience, I shall make my comments upon some of the various sections of the law as I come to them, rather than first to summarize the entire law, and then go back to criticize, believing that for oral exposition such a method will be less confusing than the other.

It will be remembered that the Australian system of voting is a fixed institution in Wisconsin; that the central feature of that system is the official ballot prepared by the State, with the names of the candidates printed thereon, and that the problem is to determine what names shall be printed thereon. It is to determine this that caucuses and conventions have been chiefly held. The law, then, provides in the first place (Section 2) that this question shall hereafter be determined only by the results of primary elections (called primaries) held pursuant to the act, and by direct votes cast at the primaries. The law does not apply at all to special elections to fill vacancies nor to the election of local, judicial, and educational officers who are chosen in the spring, except in cities, where it applies equally to the local spring and general

fall election. Justification for this exception is no doubt found in the resulting economy and in the fact that with us the rural local and judicial elections are little dominated by partisanship, and are usually conducted without notable scandal or manipulation. It will be an easy matter to extend the system, once established, to them should there seem to be any necessity therefor.

For all caucuses, and conventions, then, with the exceptions above noted, there is substituted a primary election to be held on the first Tuesday in September preceding a general election, and two weeks before the spring elections in cities. This primary is made a complete official function. It is to be conducted by the same officers who officiate at the election itself, in the official booths, upon official notice given by the State, entirely at the expense of the State, and subject, in all essential respects, to the laws governing the conduct of other elections.

Sixty days before the date of the primary, notice is to be sent by the Secretary of State to all county, town, city and village clerks, of the officers to be nominated, and these several functionaries are required to give by a prescribed period of posting and publication, notice to the constituencies to the same effect, as also of the time and place of holding the primary, precisely as in case of the election itself. On the day appointed the voters repair to the regular polling places which are to be kept open from eight o'clock in the morning until eight o'clock at night, and in cities from six o'clock in the morning until nine o'clock at night. The voter finds the polling-place in charge of the election and registration officials with the party challengers permitted to be present at the primary, and all others kept at a distance, precisely as at an election. Having arrived, he is permitted to vote, provided he has qualified or does qualify to vote at the election—not otherwise. That he may qualify, if he

wishes, primary day and the preceding day are made registration days in all places where registration is required. Finding himself qualified, or making himself so, the voter is furnished with an Australian ballot, prepares it in his booth, and it is deposited in the same ballot-box used to receive his vote in November.

Before proceeding further it is necessary to consider this ballot furnished to the voter. What names will it contain, how will they be arranged, and how did they get there? The only way in which names get upon the primary ballot is by petition. Such petition must be filed at least thirty days before the primary, for all officers representing more than one county with the secretary of state, for all other officers, except city officers, with the county clerk, and for city officers with the city clerk. In addition to the signers' name, it must contain their address, and date of signing. It formally proposes A. B., giving his address, as a candidate for the specified office at the primary in question. Curiously, it says nothing about the particular party ticket upon which he is to be nominated, but recites the partisan affiliations of the signers, and contains a declaration that they intend to support the candidate named for the office. No signer shall sign more than one paper for the same office, and all signers of each separate paper shall reside in the same precinct, except in case of state officers, when they must all reside in the same county. Each such nomination paper must have appended to it an affidavit of a qualified elector that he is personally acquainted with all the signers; that he knows them to be electors of the precinct or county as the case may be; that he knows they signed the same with full knowledge of the contents; that their residences and the dates of signing are correctly stated, and that he himself intends to support the same candidate. It is difficult to see what more could reasonably be required to insure the *bona fides* of the nomination papers.

That men may not be nominated or candidated against their will, each candidate must file with his papers a declaration that he will qualify and serve if nominated and elected.

The number of signers required varies for different offices, as follows:

(a) If for a state office, at least one per cent of the voters of his party for presidential electors at the last general election in each of six counties, and in the aggregate not less than one per cent of the total vote of his party in the state. Under this provision, coupled with the inhibition against signing more than one nomination paper for the same office, it will be seen that not more than one hundred candidates of each party for the same office can get on the official ballot.

(b) If for a representative in Congress, by at least two per cent of the voters of his party for presidential electors at the last general election in at least one-tenth of the election precincts in each of at least one-half of the counties of the congressional district, and in the aggregate not less than two per cent of the total vote of his party in such district.

The number of possible candidates of each party is here reduced to fifty.

(c) If for an office representing less than a congressional district, or a county office, by at least three per cent of the party vote for presidential electors, in at least one-sixth of the election precincts, and not less than three per cent of the total party vote in such district.

Any political organization casting not less than one per cent of the total vote at the preceding general election may be thus represented.

Non-partisan candidates may be placed upon the ballot by the filing of nomination papers signed by not less than two per cent of the total vote for the office at

the preceding general election, distributed as above provided.

Two criticisms of these provisions occur to me.

1. It is made unduly difficult for a non-partisan candidate to get upon the ballot. In the case of a state office for example he must have on his nomination papers two per cent of the total vote in the state, while the partisan candidate needs but one per cent of his party vote. Inasmuch as this privilege is extended to the partisan candidate, whose party polled as low as one per cent of the total vote, it is obvious that the minimum number of sponsors required of a non-partisan candidate is two hundred times greater than the minimum number which may be required of a partisan candidate, and in almost every case would be very much larger. With respect to congressional offices the proportion of the two minima is one hundred to one, and with respect to local offices sixty-seven to one. No good reason occurs to the writer why it should be made so much more difficult for non-partisan candidates to get on the ballot than for partisan candidates. It surely cannot be because there is likely to be a flood of such candidates to encumber the ballot. The likelihood of any such inconvenience is far greater on the partisan tickets than on any non-partisan one. For my part I am unable to justify the discrimination on any ground that seems tenable.

2. But a more serious objection seems to be that there is no way by which a new party, no matter how strong, can ever get upon the ballot. The doors of admission to this ballot are but two, viz., a record of votes cast, as a party, at the last election, and the non-partisan nomination papers. In the life of every party there is always a time when it has cast no votes at the last general election. The only way, then, that it can get its candidates on the ballot will be by the filing of non-partisan nomination papers. But this, as we shall see, will result

in their being placed on a non-partisan ticket, and transferred thereafter to a non-partisan column on the electoral ballot. The votes cast for them, then, will be non-partisan votes, not new-party votes, and they will be no better off with respect to getting on the ballot next time than they were the first; nor under the law as it stands will any possible increase in strength or participation in elections ever enable them, as a party, to secure a place upon either the primary or electoral ballot.

Moreover, other sections of the law providing that no candidate's name shall appear under more than one party designation on either the primary or the electoral ballot, the result is that no party can endorse the candidates of another party, or fuse with another party on presidential electors for one election without irretrievably losing all right or possibility of ever again appearing as a party, or having its candidates appear as party candidates for any office whatever. The same result would follow in the perhaps unlikely but conceivable case of a party whose presidential voting strength should for one election drop below one per cent of the total vote. That such a party should be deprived of its representation so long as its vote remains below one per cent is perhaps perfectly proper; but that no means should exist by which it may regain its place on the ballot when its strength has risen to seventy-five per cent of the voting population seems to be a defect.

It will be noticed that neither of the defects which I have pointed out is necessarily inherent in the primary election system. While the number of votes cast at the last election is the most convenient method of determining party strength ordinarily, yet it would be perfectly feasible to provide some other means, as by nomination papers filed, of determining this fact as to new parties, and thus affording them, when entitled to it, an access to the official ballot.

The respective nomination papers are to be filed with either the Secretary of State (for state officers, senators, and representatives in Congress, and those members of senate and assembly whose districts comprise more than one county) or with the county or city clerks according as the offices may be county or city offices.

In the case of general elections each county clerk is to publish in papers of opposite political faith a list of all persons for whom nomination papers have been filed, whether with the Secretary of State alone, or in his own office also, does not appear to be very clear from the wording of the statute. It is probably safe to hazard that it will be given that construction which will most redound to the advantage of the public printer. These notices are also to be posted in each precinct, and they as well as the printed notice are to give the date and hours of the primary, and the information that it will be held at the regular polling place of the precinct. In other words, the primary is to be as well advertised as the election itself.

The official ballot is to be prepared by the county clerk, advertised and distributed precisely as the electoral ballot. It differs from the latter, however, in this fundamental particular, that it consists of as many separate tickets as there are party nominating papers filed, and a non-partisan ticket, all fastened together at the top. The voter detaches one of them, and votes it, putting the unused ones into another box where they remain until the close of the polls without examination, and are then destroyed. Any voter may, therefore, without any statement of his political affiliations, vote any nominating ticket he chooses at the primary. But he may vote only one ticket, and while he may vote upon his ticket for any candidate named upon another ticket, yet if in the result, the candidate shall be successful on more than one ticket "he shall forthwith file with the proper officer a written

declaration indicating the party designation under which his name is to be printed on the official ballot."

This provision, I take it, cannot be considered otherwise than as a concession to those whose trade and business are politics. The practical effect of it is to compel every party to have a separate candidate for every office. It prevents combinations, fusions and endorsements among the weaker parties, and is altogether in the interest of the dominant parties. The excuse offered for it is that since a plurality of votes nominates, and any voter may vote any ticket, any other practice would permit a strong candidate of one party with his supporters well in hand, especially where the opposition to him is much divided, not only to secure a plurality of the votes of his own party, but also a plurality of the votes of another party, or perhaps of other parties. But it seems to me that this is a danger somewhat fantastical and remote, and that, even if it were much more imminent it should be avoided by some test of party affiliation of the voter, or an abandonment of plurality nominations, rather than by making it impossible for worthy men to be candidates of more than one party. Certainly if the latter alternative cannot be avoided it is a grave, inherent weakness in the scheme, which may well give us pause before we extend it to, for instance, the judiciary. In Wisconsin, the judiciary, though elective, are almost entirely out of politics. No conceivable advantages from primary reform would justify throwing them back into the cess-pool, wherein they wallow in some other states.

The votes cast at the primary are canvassed and returned substantially as those cast at the general election itself. The person receiving the greatest number of votes is declared the candidate of his party, and his name, as such, is placed npon the official electoral ballot. Vacancies occurring after the holding of a primary are

filled by the appropriate party committee, who, with the exception of the state central committee, are elected at the same time and upon the same ballot. The party platform is to be adopted, and the state central committee elected by a convention of all the party candidates for state offices and for the senate and assembly. It would seem as if this convention might well be charged with the additional duty of naming party candidates for presidential electors, so long as these useless instruments for recording the people's will continue to encumber an age which has outgrown them. To require them to be nominated at the primaries is likely to be unsatisfactory. Nomination papers for the empty honor of being a popular amanuensis are not likely to be circulated with much zeal. Yet it is important that the office be held by men of character and responsibility. For it must be remembered that it is only an extra-legal custom that has shorn the presidential elector of the discretion and initiative he was created to possess.

These are all the features of the law that it is necessary to dwell upon. What seems to me its most fundamental defect remains to be pointed out. It is that provision which makes the party nominee the man who receives the largest number of votes cast, irrespective of the total number of votes. In the case of state officers, as has been pointed out, there may be as high as one hundred candidates. Such a case is, of course, not likely to arise, but if it did, it is obvious that two per cent of the total vote might make its recipient the party candidate, against the will of ninety-eight per cent of the party who had voted for other candidates. Cases will probably not be rare where a third or a quarter of the vote will prevail over the scattered two-thirds or three-quarters. The candidate who has the field against him will infallibly win.

It is said that in the history of political conventions this has rarely been the case. One of our great political

parties has, as is well known, carried conservatism in this particular to the point of requiring in its presidential conventions a two-thirds vote to nominate. It cannot be regarded otherwise than as a grave defect in such a system that, under it, the great political parties are quite likely to be represented by candidates who are the choice of but a minority of their parties. And note that where this occurs the minority that is represented on the ticket will be composed of the poorest elements of the party. For it is they who are most easily organized into a compact and governable body. The saloon vote will be concentrated, the respectable vote divided. In New York the candidates of Tammany will easily secure the nominations, since that institution is an adept both in concentrating and controlling its own vote, and in dividing and dispersing its opponents. That these fears are not idle ones is shown by the result of the first primary of this sort at Minneapolis, when the notorious "Doc" Ames easily secured a plurality nomination. Of course such things happen in conventions. But the powers of evil are there immensely handicapped by the fact that they must have a majority—must beat their opponents not only separately but unitedly. To permit minority nominations is to play into their hands to a degree that makes me tremble for the result.

Is there no way of escape from minority nomination? Of course a re-ballot confined to the two candidates who had received the highest votes would be a way out. But it is said, and I think truly, that this is impracticable. The great body of voters have never been in the habit of attending primaries at all. One fundamental purpose of the legislation is to so safeguard, legitimatize and rehabilitate the primary as to tempt these voters from their timid seclusion. But, if you would do this, you must be merciful to them. If you hold up before them the prospect of a double primary, you will scare them

away before you have gotten them within hailing distance. The objection on the score of expense I do not regard as serious, since all the expenses of every sort are borne by the State, which may well pay whatever is necessary to secure as nearly perfect an expression of the popular will as possible. But the other objection to a second primary seems to be insuperable.

It has been said that since minorities frequently elect, and no serious inconvenience arises therefrom, therefore there can be no serious danger in permitting minorities to nominate. But this does not follow. To permit a minority to designate the candidates, and then a minority to select which of the minority-designated candidates shall have the office is to raise a fraction to the second power, and insist that it is no smaller than before.

The only purpose of a re-ballot is to ascertain the second choice of the voter, his first choice has been already expressed. It has been ingeniously suggested that there is no necessity of a second ballot to ascertain this: that the voter may, at the time he indicates his first choice, also indicate his second, and that the second choices of those supporting the lowest candidates be counted until, counting his first and second choices, some candidate has a majority. It would seem that this method would accomplish the result, the only objection being the possible difficulty of educating the voters to work the scheme intelligently. It would seem that this difficulty ought not to be insuperable, and that, so far as it proved so, it would be in the nature of an easy educational test, giving, perhaps, no more advantage to intelligence than it ought to have.

But, whatever its merits, it is not a part of the law as it now stands, and the absence of some provision for such result seems to be its most serious defect.

It is not entirely clear how the law will work when applied to presidential electors chosen as at present on a

general state ticket. It would seem that in such states as New York, Pennsylvania, and Ohio electing those officials by the score, this system might be hard to operate, and might easily result in an unfortunate and unrepresentative choice. The liability to this, however, can be greatly lessened, if not done away with, by the method, formerly in vogue in some states, of choosing electors by districts.

When all is said, however, the law is one which betokens an awakened public interest in elections, and may well be productive of much good. But we must not expect too much of it. It will not regenerate human nature. At bottom the trouble with the old system of caucus and convention was nothing more than that the virtuous and intelligent public would not take the trouble to work it. As has beeen remarked before, theoretically it was a well-nigh perfect instrument for expressing the popular will. Its abuses grew out of the fact that most men found it more profitable to be attending to their business and affairs than to be operating the machinery; whereupon it was taken in charge by men who made a business of operating it. The new system is more difficult for the professional politicians to engross. In so far as the primary itself is concerned, it is rendered no more respectable than it has been for some years in Wisconsin and many other states; but in eliminating the convention, the whole electoral process is placed under legal protection, and the practice made certain and uniform. But is the convention abolished? Already it is said that one of the great political parties in Wisconsin will hold a pre-primary convention, at which its candidates will be nominated, and its platform adopted. If, and in so far as, it does this, there is almost a certainty that its candidates will be nominated at the primaries, and its platform re-adopted by the September convention of candidates. This would not have been apt to happen

with respect to local affairs had the law applied to them only. But it is entirely possible that, by reason of attempting too much, the primary may become a mere machine for registering the antecedent decrees of a convention, and as useless a piece of machinery as the electoral college.

Finally, no political contrivance is likely to revolutionize human nature, or prove a panacea for political ills. If the new system is forced to appeal in its operation to a public indifferent to its political duties, careless of who may be candidates for office, and subject only to spasmodic upheavals of *post factum* political indignation, then I, for one, look for no political regeneration to come from this or any other mechanical contrivance for outwitting Satan. But the very demand for such legislation, the continued agitation of the subject, resulting ultimately in the defeat of the obstructionists are themselves hopeful signs of an awakening of the public conscience to its responsibilities, and of a reviving interest in good representative government. If the agitation for electoral reform accomplishes little or nothing more than such awakening and revival, it will have served a good purpose..

THE NEW YORK PRIMARY LAW.

BY HENRY ADSIT BULL, REPUBLICAN DISTRICT COMMITTEEMAN, BUFFALO, N. Y.

The New York Primary Law was passed in 1898 and revised in 1899. All primaries for the last five years have therefore been held under this system. In this period there have not only been no important changes in the law, but there has not even been any considerable discussion of any change. The people are satisfied with it and no change is likely until the growing desire for better government shall create a demand for further reform. In any event there will be no step backard. The fundamental features of the present law will remain, and the demands of the future will be for an improvement in details and the addition of new features. The operation of the law has already developed facts which, to a thoughtful student, suggest improvements, but the voters generally are quite satisfied with the gain of having eliminated some of the worst of old abuses. In this paper I shall endeavor to show first what the law is; second, what results it has accomplished; and third, what changes of detail would make it still more useful.

The fundamental features of the New York law are the enrollment of the voters of every party as an incident of registration and the holding of primaries by the regular election officials at public expense. The law applies absolutely to all cities having a population over 50,000; all other cities and all villages having over 5,000 population can come in under the law by resolution of the party committees or a referendum vote, which must be taken at the next election after presentation of a petition from

ten per cent of the voters asking for submission of the question. In 1902 a law was passed allowing towns in certain counties to come in under the law in a similar manner. The essential features of the law seem to be capable of universal application.

A preliminary reference to some features of the Election Law is necessary to a thorough understanding of the Primary Law. The Election Law provides for the appointment by appropriate local officers of boards of inspectors for every election district. These inspectors are usually chosen from lists submitted by the chairmen of the county committees and each party has equal representation on every board. In Buffalo, and perhaps some other places, all inspectors have to pass a qualifying examination before appointment, and inspectors of good ability and intelligence are generally secured. Personal registration annually is required in all cities and all villages having over 5,000 inhabitants; elsewhere the list of voters for any election is made up by copying the preceding year's list, erasing the names of persons proved to the board's satisfaction to have ceased to be voters of the district, and adding new names similarly proved. Where personal registration is required the board meets on four days for at least 13 hours each. Elsewhere the board holds two sessions of 12 hours each.

The Primary Law starts out by making party enrollment an incident of registration of the previous year. Where personal registration is required, the inspectors are required to offer every voter a printed blank on which he can make a cross mark under the name of the party with which he wishes to affiliate. If a voter wishes, he can take his blank into a booth, mark it unobserved, seal it in a thick envelope and deposit it, before the inspectors, in a large ballot box. If a voter does not care to affiliate, his blank must still be enclosed in the envelope, even though unmarked, and deposited in the

box. About 80 or 90 per cent of the voters affiliate. After election this box is opened by the county clerk or other officer designated as custodian of election records, and the official enrollment lists of both parties are made up by him from these blanks. These lists must be used at all primaries during the following year. They are kept in the custodian's office all the rest of the time and duplicates are furnished the party committees. Only three classes of changes can be made: A voter who registered but did not affiliate, a voter who has come of age, or an affiliated voter who moves into another district, can have the record corrected by filing an appropriate affidavit. The party committees are required to return their duplicate enrollment books before every primary for correction up to date.

Where personal registration is not required, the inspectors go over the registration list and make up enrollment lists to the best of their information and belief, and any aggrieved voter can have the entry of his name corrected by filing an affidavit. All registration and enrollment lists are public records and must be exhibited on demand to any persons during the hours when the custodian's office is required by law to be kept open. The custodian must also permit copies to be made and must certify them for a fee of one cent for every 20 names. The lists are much inspected and many copies are certified. A certified transcript containing his name and enrollment is sufficient to entitle any one to vote.

It may be remarked here that the law prescribes all forms to be used in the minutest detail. The law is so specific on all points that it is really unreadable, in a literary sense and seems confused on a hasty perusal, but the effect, when an election officer gets a form, is that he finds the requirements of law easy to follow and impossible to evade without being clearly guilty of a crime.

These provisions of the law have put the enrollment

of voters on a sound and honest basis. Before this law the vote of a member of President Cleveland's cabinet was refused at a Democratic primary because he would not swear to having voted for the party candidate for lieutenant-governor at the previous state election. Such an occurrence as this is now impossible, nor is there any more talk of packing primaries. Every citizen can vote at his party's primary in his own district, and no one can vote at any other.

From enrollment we pass to the subject of primaries, and first of all, the arrangements for them.

The law fixes an annual primary day, which in most places is the seventh Tuesday before election. On this day all candidates are voted for who are to be nominated by direct vote and all delegates to conventions are chosen, except that in some places delegates to conventions to select delegates to state conventions are chosen at an earlier primary, and in presidential years there is still another primary in March. As all are conducted in the same manner, it will be convenient to speak only of the annual primary.

Notice of all primaries, giving full particulars of all offices for which candidates are to be nominated, whether by direct vote or by conventions, etc., is required to be prepared by the party authorities and filed 20 days in advance with the custodian of records, who causes it to be published. The custodian designates the places for holding primaries, which are also specified in the notice.

The places for primaries must be the polling places, as far as practicable, and must not be connected with any saloon. The City of Buffalo owns portable houses, which are distributed annually before the first primary and taken up after the election.

The law provides that for holding primaries two election districts shall be combined in one primary district. For instance, the first and second districts of the

24th ward are designated as the first primary district, and the primary elections of the Republican voters in the first and second election districts are held jointly at the first election district polling place. Similarly the Democratic voters of the first and second districts hold their primary at the same time in the second district polling place. In each polling place the inspectors for both districts of the party holding its primaries there, are organized as one board of primary inspectors, so that there can be one chairman of the board, having general authority. Practically, the members from each district sit separately, keeping separate ballot boxes, and the primary for each district proceeds independently of that of the other.

These arrangements are simple and matters of detail, but still of value as safeguards.

There is another preliminary arrangement that is more interesting. The ballot deserves particular notice. It is the vital feature of the primary and the weakest point in the New York law. The law on this subject reads well and seems fair, but its effect is to give the leaders a practically absolute control of the party. Let us examine these provisions and the practice under them.

At least 20 days before every primary the custodian of records must prescribe the size, color, weight and texture of paper to be used for ballots, and must furnish any quantity of blank ballots at cost to any elector. The ballot must be of such character that nothing on the face can be seen when it is folded, and the color must be different for each party. Any elector may have ballots printed with any names he chooses on them, and may leave such ballots with the inspectors. When a voter comes in, the inspectors are required to hand him one of every kind of ballots left with them. These provisions lay down good rules. The mischief comes in the preparation of the ballots.

The district committeeman in every district is charged

with the duty of making up a slate. He prepares a list of names for delegates and offices, and the ballots with these names on are printed by the county committee. If any one wishes to contest the organization program at any convention or the organization candidate for any office, he must get his own ballots printed with the names of his choice for delegate or for nomination. There is no difficulty about this, but when he comes to fill up his ticket he runs up hard against the machine. Suppose a man wants to make a contest for the assembly nomination, but is satisfied with the program in other respects. He selects his candidates for delegate and alternate to the assembly convention, and then what? Well, then, he goes to the district committeeman and asks for the names that are on the slate for the other places on the ticket. Ten chances to one the committeeman will say "Go to, you are fighting the organization, you can't expect us to help you; get your own names, if you want any." The case is the same if a young man, with no animosity to the organization, but ambitious to have a part in it, believing he can do better than the district committeeman in office, desires to make a friendly contest for the position. The incumbent will probably refuse to give him the names. I know, for I have been there, on both sides.

In this situation the aspirant does not care to put new names on all the places on his ticket, for then he will be in the position of fighting the leaders all along the line. Consequently, he prints a ballot with names on it for the places he contests and leaves the others blank,—or more likely, he gives up the attempt in disgust. To be sure he can have pasters printed and he can ask voters to write his name in on the organization blank, crossing out the name of the regular candidate for this position, but experience shows that voters will not do this. Nor will a voter select a ballot with a lot of blank spaces on it when

he can take one with a full list of names, unless he has a strong special interest in the man making an independent fight. The reasons for these things are not important. I know from experience that the facts are as stated. The result is disastrous to the independent. For a ward office, depending on the vote of not more than seven districts, he may succeed, but if many election districts are involved, the system is too strong to beat. The instances, since the law took effect, of successful contests for anything higher than a ward office are so few, if any, as to be simply exceptions that prove the rule.

In my humble judgment, the knowledge of the difficulties of a contest for nominations has been a large factor in producing those harmonious conventions in New York which demonstrate the condition of servitude to which the leaders of both parties, especially the Republican, have reduced the rank and file.

To remedy this working of the law, I would suggest a further legislative recognition of existing party practice. Require the district committeeman to complete his slate and file it with the custodian of records a week before the primary. Then permit an independent nomination for any position to be made by filing with the custodian a written nomination signed by a reasonable percentage of the party enrollment in the district and print the names of all candidates for every position in alphabetical order under the name of the office to be filled. As all contests under this ballot would be within the party, the arguments used against this style of ballot and in favor of the party column at election would hardly apply. If, however, the organization were given a column and all other candidates another column, this distinction would probably be so odious to the voters that the organization would suffer more from it than the independents. If in towns that use voting machines for election, the machines could be used for primaries also,

that would be so much the better. Very likely some one here will suggest a better form of ballot than I have indicated. In leaving this branch of the subject, I cannot too strongly emphasize the fact if you wish to take the New York law as a model, that the form of the ballot will bear all the study and consideration you can give it.

This review of the preliminaries has covered incidentally most features of the conduct of primaries. The procedure is so simple as to require no comment. Provision is made for watchers and challengers as at election, and watchers have the right to see the empty ballot box before voting begins and to stay right with it until the result of the vote is announced.

The voting is very simple. Any person whose name is on the list can vote, unless, upon being challenged, he declines to swear to his identity and residence. The polls must be kept open by law from two until nine o'clock.

The ballot boxes must be opened and the votes counted in the presence of the watchers and with the door open to public view. All ballots rejected as void, and all objected to by any person as marked for identification, must be put into a separate envelope and the return must show the number of all such ballots. The envelope containing all ballots about which there is any question must be filed at once with the return in the office of the custodian of records. The inspectors must also deliver to any candidate or his representative on demand a statement of the result of the primary so far as he is concerned. This statement in the hands of a delegate entitles him absolutely to be admitted to a convention and to have his name placed on the roll.

Following the primaries comes either a convention or the ascertainment of the vote for different candidates in case of direct nomination. In this connection it may be said that the student of the system should not overlook sections 50-66 of the Election Law, passed in 1896.

These sections establish certain rules as to primaries and conventions which have been largely superseded by the more stringent regulations of the Primary Law, but the earlier statute has not been repealed and some features of our system still rest on the Election, not on the Primary Law.

As direct nominations seem to be of interest to your association, it may be convenient to treat these first.

The law leaves the party committees to determine whether nominations shall be made by convention or by direct vote. At the present time all ward nominations are made by direct vote and all others by conventions. My own ward, the 24th, furnishes an illustration of the practicability of direct nominations. The ward contains seven districts with an enrollment of 3,000 Republican voters. The aldermen, supervisor and constable are nominated by direct vote every alternate year, and the general committeeman is elected annually. In 1901 there was a spirited contest for the aldermanic nomination, which brought out a large vote, about 30 per cent, the successful candidate winning by only 11. Very likely the defeated candidate might have obtained more than the 12 votes he needed for nomination if all the district committeemen had given him the names on the organization tickets so that he could have had complete ballots printed in all districts, as he did in the first. However, neither candidate was first-class, and the ward elected an excellent Democrat, although other Republican candidates got 1,500 plurality in a total vote of 4,200. In other wards there have been contests over these local nominations with varying results, some good, some not so good. If either General Committee of Erie County should so resolve, all county and city nominations could be made by direct vote. Indeed, the same authority could put into effective operation all the rules I have suggested for an official primary ballot. These facts show

from what small details of the law all unfortunate effects result, and how easily they can be remedied.

Our discussion now has covered all the features of the system of nominations in New York, except conventions, committees, and the enforcement of the law by summary judicial review or punishment for violation. These features are not strictly matters of primary reform, but as they are in the New York Primary Law and can be briefly treated, it seems worth while to make our review of the system and the legislation complete.

The principal provisions about conventions secure the holding of them at reasonable times and places; require that the roll shall be made up either by the custodian of records from official returns, or else by the party authorities placing thereon the names of persons producing certificates of election as delegates signed by the inspectors; the convention must be called to order by some person designated in writing by the chairman of the County Committee; this person must call the roll for the election of a temporary chairman; the convention cannot be held ahead of time, nor can it be delayed more than one hour, if a quorum of delegates has appeared.

The law provides that there shall be a general committee of each party for every county, composed of such members and chosen in such manner as the party rules may prescribe, except that the members must be chosen on the annual primary day. The committees may adopt rules not inconsistent with law, which may not be amended except upon reasonable notice. Certified transcripts of all rules and all amendments thereto must be filed with the custodian of records within three days after adoption. Some of these rules are excellent, but time is lacking to speak of them beyond saying that the whole law is developed from them.

The enforcement of the law is provided for by giving the right to review any determination or compel any act

by certiorari or mandamus, and jurisdiction is also given to any district or county judge, to review any act or neglect in a summary way and make such order as justice may require. Beside this, there is the criminal law for violators and, as before remarked, the Primary Law is so minute and specific that it cannot be evaded or ignored. I have never seen a situation in which the rights of any one were not provided for, and the provision is always so clear that the officer must obey or disobey the law.

In justice, however, to the community in which I reside I must say that since the law was passed, the earnest desire of all officials I have known or heard of has been to understand and follow the law because it is right, and not through fear of punishment for violation.

In general it may be said of the law that it has brought about honest enrollment and primaries. It has failed to result in any substantial improvement in the character of nominations. It has had a distinctly bad effect in putting obstacles in the way of independent movements within the parties and discouraging contests. In consequence of the last result the ordinary vote at primaries has dwindled to such an extent that the expense to the county of holding the primaries is sometimes as great as one dollar for every vote cast.

In discussing the provisions about the ballot some suggestions have been offered which I believe would greatly lessen the difficulties encountered by independent movements within the party and an increase in contests with a fair show for success would undoubtedly bring out a larger vote. In my own district, for instance, out of 500 affiliated Republican voters it is easy to get 250 to attend any primary when there is a contest, but there has been no contest at most of the primaries in the past five years, and at these the vote has been anywhere from 10 to 20.

The changes I have suggested so far have been simple

and could be put into effect by resolution of the party committees without any change in the law.

There is one suggestion of a general change which I wish to offer in closing this paper. The present system has a primary day and four days of registration, so that the county pays the inspectors for five days' work. The suggested change would give five days of registration involving no additional expense and would have the primaries held in connection with the first two days of registration. This could be accomplished either by having the primary of one party held in connection with the first day of registration, and the primary of the other party held in connection with the registration on the next day; or practically the same board with two ballot boxes could run both Republican and Democratic primaries in the same place on the same day.

The first result of making this change would undoubtedly be a large increase in the vote at the primaries whether there was any contest or not. A large majority of voters register on the first day anyway, and most of these are also glad to attend a primary when they feel that anything can be accomplished by their attendance. By holding the primary and registration together probably two-thirds of the voters in any district would very quickly get the habit of registering early and voting at the primary. The assured attendance of so many voters would encourage independent movements within the party, because the leaders of such movements would not be under the necessity of doing a lot of work to get out the vote. The vote would come without effort, and the decision on the merits between rival candidates or factions would be rendered by practically a majority of the party enrollment and would be representative of the feeling of the whole party. Another good result that might follow would be an extension of the system of annual personal registration through the development

of a feeling that a man who deliberately stayed away from both primary and registration had hardly enough interest in the community's welfare to entitle him to a vote. Still another would be a larger total registration through giving more days and extending over a greater period of time.

I have discussed this proposed change with a few people, all of whom have endorsed it, and I see no objection to be raised to it, except that the party organization may be expected to oppose it because the effect would be to diminish the control of the bosses. I submit, however, that if you should take the New York law for a model and hold the primaries and days of registration with some provisions along the lines I have suggested about the official ballot, you would have a system which would produce a vast improvement in nominations, whether the latter should be made by direct vote or by a convention.

THE BRONSON PRIMARY LAW IN OHIO.

BY PROFESSOR A. H. TUTTLE, OHIO STATE UNIVERSITY.

Three bills, directly bearing upon the subject of elections, passed the Ohio Legislature at its last session. They were the Chapman Bill, the Hypes Bill and the Bronson Bill.

The Chapman bill did away with all spring elections in Ohio, so that last fall the voter was presented at the polls with a ballot containing names of candidates for municipal, school, county, congressional, state and national offices. This bill was introduced by a member from Montgomery County (Dayton), but its real author was the Cuyahoga County delegation. It has been the futile ambition of the Republicans of Cleveland for years to defeat Tom Johnson for mayor. It was thought this might be done if the municipal election were put at the same time as the State election. So to serve the purposes of Cuyahoga County Republicans, spring elections were abolished over all the State. One of the most bitter fights of the session took place over this bill. Those interested in better municipal government over all the State protested against the mixing of municipal and school with state and national politics. Members freely confessed that if left to themselves the bill would not have received a dozen votes, but members were not left to themselves. The whole pressure of the administration was brought to bear and wavering members were whipped into line. While voting on this bill in the Senate there was presented the pitiable spectacle of a member arising and saying that his judgment and conscience were against the bill as were also the great body

of his constituents, but that he yielded to the demand and greater wisdom of the leaders. The bill was referred in the House to the Committee on Elections, of which Mr. Bronson was chairman. This committee, aside from Mr. Bronson, was evenly divided upon the question of reporting favorably upon the bill. Realizing his advantage Mr. Bronson tried to extract, in return for his favoring the bill, the promise from the leaders that they would favor his Primary Bill. They would not do this, but promised, instead, that they would favor a primary bill. With this he was, unfortunately, satisfied. The committee with his vote reported favorably upon the bill and it became a law. The opposition, however, gained one important point. The committee refused to report this bill until the Legislature agreed to pass an act proposing an amendment to the constitution to the effect that municipal and county elections and state and national elections should fall in alternate years. This amendment is to be voted on this fall and will probably be carried. If so, hereafter, there will be no spring elections in Ohio, probably a good thing. State elections will come one fall and county and municipal elections the following. The national election will fall with the state election.

The second bill passed was the Hypes bill. This bill creates, or rather reorganizes, the office of State Supervisor and Inspector of Elections. The Secretary of State is, ex officio, to hold this office. In every county he appoints four deputy State Supervisors of Elections, two being from each of the two leading parties. The county executive or central or controlling committee of each of these parties names to the State Supervisor his men whom he shall appoint. If the executive committee does not name any men the State Supervisor appoints any two men he chooses for that party. These Boards of Deputy State Supervisors have complete charge of the regular

election and subject to the call of the committee, of which we will speak later on, of the Primary Election also. In case there is a dispute between factions as to who is the rightful nominee of a party the decision of this Board is final. If they cannot agree, it is referred to the State Supervisor, whose decision is final. Several interesting questions have already arisen under this law. They can be but briefly mentioned:

In Cleveland there are two factions in the Democratic party, the Johnson-Saler faction and the Independents, or anti-Johnson faction. The county executive committee there consists of forty-eight men. This committee last fall appointed a sub-committee of five to run the campaign. This sub-committee named two men to the State Supervisor whom he should appoint as the Democratic members of the Cuyahoga County Board of Deputy State Supervisors. The State Supervisor, a Republican, of course, seeing an opportunity to weaken the Johnson power, ruled that the sub-committee was not the county executive committee, and so could not name the men. In the absence of any names being submitted by the county executive committee he (according to the statute) named two democrats of the anti-Johnson faction as Deputy State Supervisors. This aroused the Johnson faction to deepest anger and mandamus proceedings were brought but finally dropped. The Supreme Court has not passed as yet upon the question but is about ready, I understand, to hold that the decision of the State Supervisor as to what is the executive committee is final. This gives, of course, tremendous power to this official in cases of factional disputes.

A second question arose in northeastern Ohio when a fierce controversy raged as to the nominee of the Republican Congressional convention. The convention met in Warren on April 13. As often happens a part withdrew and two men, Judge Hildebrandt and Judge Scroggy

were nominated by rival conventions. Both names were certified, as the Hypes bill requires, to the Board of Deputy Supervisors, each protesting against the other nomination. In such a case the Chief Deputy State Supervisor and clerk of the various counties in the district meet and decide, and their decision is final. This board met on May 19, and apparently ignoring the facts in the case decided in favor of Scroggy. A new board came in on the first Monday in August and taking up the controversy once more met again on Sept. 19, and the factional complextion of the board having changed, decided in favor of Hildebrandt.

The statute reads: "Such objections on other questions arising in the course of nominations of candidates for district and circuit officers shall be considered by the chief deputy state supervisors and clerks of said election boards of the several counties comprising the district, circuit or subdivision, and their decision shall be final." The question was whether the Board having made a decision was bound by that decision or was it a continuing body and could it change its mind as often as it pleased up to 25 days before the election, the time set by law within which all objections to nominations must be filed. The State Supervisor was strongly of the opinion that it was a continuing body and could change its mind as it pleased, up to the time limit, but the Supreme Court by a divided vote decided otherwise on Dec. 12 last. This decision may be right but it opens up room for great fraud. A faction having control of the Board may as in this case file objections and have their friendly board in secret session decide in their favor, and the people have no redress. There is little doubt that the Legislature will amend the act to undo the effect of this decision of the court.

A third controversy arose in Brown Co., but need not be discussed here. These controversies have been noted to show the effect of this law and the great power lodged

in the State Supervisor and Deputy State Supervisor of Elections in the matter of party control and nominations. In the hands of an unscrupulous and partisan State Supervisor it could be used to take unfair advantage but it is in the main, I believe, a good law. The general elections of Ohio are remarkably free from fraud and the Secretary of State, who is the State Supervisor as well, tells me that within the last month he has received requests from ten states for copies of the Election Laws of Ohio. The last one was from the Secretary of State of Colorado. Ohio has done great service in many ways to the country, but it will do greater service still if it can in any way help benighted Colorado secure Anglo-Saxon elections.

The third bill passed by the Legislature was the Bronson Bill. This is called the Bronson Primary Law.

Prior to the passage of this act there were on the statute books three laws governing primaries:

1. A special act applying only to Butler County (Hamilton). This was a good law. It provided for a single day upon which all parties should hold their primaries. It threw about the primary all the safeguards of the general election laws. It provided for direct nomination of candidates. Any one might have his name put upon the primary ballot by filing a petition signed by a certain number of electors. It did not provide for an enrollment of voters along party lines. Primaries have been held in Butler County for several years under this law with complete satifsaction. It is of course now repealed by the passage of the Bronson law, and would anyway be considered unconstitutional by the recent ruling of the Supreme Court as to special legislation.

2. The second was also a special act applying only to Hamilton (Cincinnati) and Cuyahoga (Cleveland) counties. This act also provided for the direct nomination of all candidates. If, however, the county executive committee

desired to have the convention and delegates it might do so by filing a petition to this effect with the Board of Elections seventy-five days before the election. Primaries according to this act were all to be held on a stated day at the regular polling places. Party membership was to be determined by past open affiliation with the party. This law was passed in 1898 and in 1899 declared unconstitutional by the Superior Court of Hamilton County, on the ground that it contravened that clause of the constitution which declares that all laws of a general nature shall be uniform in their operation throughout the State. The case was not carried up but was considered final.

3. The third law was a general law. It simply provided that the county executive committee might, if it wished, petition for a primary under this law. If so, all the expenses were to be paid by the city or county as the case might be. If the party wished not to use the law, then it might hold a primary at its own expense. The parties generally held their primaries under the law since it put the expense on the city or county and in no material way interfered with the power and control of the organization. The time, place, manner and conditions of holding the primary, the qualifications of the voters, and the name of the persons to preside and supervise were all determined upon by the party committee.

It will be seen, therefore, that Ohio had practically no primary law. Everything was left to the control of the party. In Columbus wagon loads of men might be seen at any primary being carried from one voting place to another, voting as many times as there were primaries. When asked to give their names these repeaters would do so in series, as Jim Moon, Harry Sun, Dick Star and Sam Planet.

In Cincinnati we have one of the most despotic party organizations in the United States. A city well and eco-

nomically administered, it is nevertheless under the absolute control of one man, Boss Cox. No one can think of aspiring to any office, however humble, without his consent. A poor woman cannot get a pound of coal from the city save through the precinct committeeman. As a result the Hamilton County delegation in the State convention and in the Legislature have absolutely no mind of their own. They but register the will of George B. Cox. In some counties the delegates even were not allowed to be chosen by the people, and primaries themselves were done away with.

Just recently the county executive committee of Belmont County, following its long established custom, met and appointed the delegates to the coming State convention and instructed them to vote for Herrick. The State central committee has put the stamp of its disapproval upon committee-selected delegates, so now in these counties the executive committee convenes as a convention and chooses the delegates.

In some counties, however, the practice has not been so bad. For years nomination by direct vote has been in use in many counties in Ohio. In Cleveland, since 1887, with the exception of one year, the Republicans have chosen their candidates in this waiy.

The experience here has not been altogether satisfactory. A writer in the *Outlook* a few years ago in a communicated article called attention to the conditions in Cleveland as proving that nominations by a direct vote is not desirable in large cities. The test, however, as given in Cleveland and other places in Ohio was not a fair one. The organization had the distributing of the ballots. There was, moreover, no party enrollment of voters and there is no question that Democrats were used in large numbers for the various candidates in the Republican primaries. The only thing the Cleveland experience proved is that a direct nomination plan to be successful

must have along with it the other conditions that are to be found in a strong mandatory primary law. One phase of the Cleveland experience is, however, interesting and valuable. The newspapers, as soon as candidates were announced began what was called a closed season. That is, they maintained a dead silence as to all candidates, but offered their columns at advertising rates. The result was that no one could hope to be nominated except at great expense. In Cleveland one could not ride a block without seeing billboards filled with advertisements of candidates. In the southern counties in the State, where direct nomination is the rule, it seems from the evidence that securing a nomination is a costly thing. Here is revealed, it seems to me, a possible serious evil in nominating by direct vote. Control of the nomination by the machine is bad enough, but if nomination by a direct vote means the transfer of that power to the newspapers and a largely increased expense to the persons seeking nomination are we much better off?

These conditions would in themselves justify and seemingly have caused the introduction of a strong primary law but they doubtless would not have done so had it not been for the necessity from a legal point of view of having a general primary law passed. The decision of the Ohio Supreme Court against special legislation made such a law necessary, as it made necessary a general school code and a general municipal code. The chairman of the Elections Committee in the House was Mr. Bronson, a graduate of Cornell, and for a long time a member of the Board of Elections in Franklin County. It was while serving on this Board that he saw the corruption of the primary and came to realize the need of a Primary Law. When elected to the Legislature he asked for the chairmanship of the Committee on Elections because he desired to introduce a general Primary Law. The bill which he drafted was not perfect. It did not go nearly

as far as the Minnesota or Wisconsin law. It had, however, many good features. It was to be general in its operation and mandatory upon all parties. It provided for all primaries to be held on a special day at the regular polling places. It made the primary one of the regular elections, and put it under the control of the Board of Elections. It provided for an enrollment of voters along party lines. It provided that names should be put upon the ballot by petition. For a precinct office 15 signatures were to be required, for a ward 25 or for a county 100.

It effectively took the control of the Primary from the Party Committee, leaving the committee only the right to decide whether the Primary should elect candidates direct or merely delegates to a convention.

It became evident very soon that the leaders who controlled the Legislature would not allow such a bill to become a law. A conference was called at which was present, among others, Mr. Walter Brown ,the leader of the Republican organization in Lucas County (Toledo). It was made known in this conference that if Mr. Bronson wished to have a Primary Bill passed it must be along lines acceptable to the organization, and as Mr. Brown remarked: "Of course nothing that will interfere with the control of the organization will be acceptable." The upshot of it all was that the original Bronson Bill was shelved and a new bill bearing the same name, but written by Mr. Brown, was introduced and passed and now goes under the name of the Bronson Primary Law.

It is little better than no law at all. It is in the first place not mandatory upon anyone. The county executive committee may hold a primary under it or they may ignore it altogether and hold one of their own or none at all. If they decide to use the law, and most of them do for obvious reasons, they send a petition to this effect to the Board of Deputy State Supervisors of Elections, stating in their "call," as it is termed, the time, manner

and conditions of holding the primary. The Board, then, according to the law, has control of the primary subject to the conditions of the "call." It prepares the ballots, appoints the judges of the election, using the regular election judges as far as possible, and furnishes the poll books and tally sheets. Only those who are registered voters can take part in the primary. To accomplish this result the regular registration books are used in the primary election. No one can vote who if challenged will not swear that he voted the party ticket at the preceding election. The Board of Deputy State Supervisors and the chairman of the party committee constitute the canvassing board. The Australian ballot is used and the general election laws so far as possible are made applicable to the primary elections.

It is evident that under this law the party committee has almost absolute power. In their call they state the time, manner and conditions. In Franklin County (Columbus) in their "call" they specified last summer that all candidates should be voted on directly at the primary. Persons desiring to have the names of the party ballot should hand their names to a sub-committee of the county committee. No names should be put on the ballot by the Deputy State Supervisor except those given to them by this sub-committee. Presumably this sub-committee handed in all names that were presented to it, but it was a matter entirely within their control, and one instance at least was reported where this was not done.

In other words, according to the "call," one of the conditions was that a sub-committee of the central committee should have the absolute say as to who should be voted upon at the primaries. The call in this county furthermore provided that the ballots which, according to the statute, were to be printed by the Board of Elections and given by them to the Election Judges should each be

countersigned by the chairman and secretary of the party executive committee. This meant that they must be given to the party committee who could distribute them as they saw fit. The Election Board objected to this condition, claiming that under the statute they should, as in regular elections, give the ballots to no one save the sworn judges of the election. The author of the bill, Mr. Bronson, was called in and he declared this to be the intention of the bill. The question was taken to the State Supervisor and Inspector of Elections (the Secretary of State) who ruled that since the Board of Deputy State Supervisors were to control the primary subject to the conditions of the call, they were bound by whatever conditions were a part of the "call." This ruling took out whatever life ever existed in the bill. In Toledo the "call" imposed conditions even more stringent and more conducive to the absolute control of the organization. So complete was the organization control here of the primaries that but last week a mass meeting was called in Toledo by leading Republicans for the purpose of demanding that in the approaching primaries the open Baker primary be used that the rank and file of the party might have something to say in the choice of candidates.

In Franklin County it is already understood that the Republican "call" this year will provide for conventions through and through. It is desired that Franklin County send a delegation to the state convention favorable to Herrick for Governor, and it is feared that if the choice of delegates be left to the people they will not choose Herrick men. Therefore the primaries will choose delegates to a county convention, which convention in turn will choose the delegation to the state convention. The organization has no fear but that it can handle the county convention.

Such, then, is the Bronson Primary Law. Its one redeeming feature is that it forbids a man the right to

vote in a primary unless he is registered in the precinct in which he tries to vote. This effectually prevents repeating. The purpose of this law, as framed by Mr. Brown, was to make the primary free from fraud. There was no purpose to, in any way, lessen the control of the party organization over the nomination of candidates.

There are many people in Ohio, however, who think we have now a first-class primary law and that nothing more need be done. There are many, however, who feel very differently, among them being Mr. Bronson himself. At the next session of the Legislature, which meets next January, the Secretary of State tells me that he contemplates having introduced a primary law which shall embody all the features of a real mandatory, direct nomination primary law. He expects it to be defeated, as it surely will be, for Ohio is not yet aroused fully to the need of such measure. The names of Sherman, McKinley and Hanna are still names to conjure with in Ohio. The organization of the dominant wing of the Republican party is the organization founded by these men, and appeals to loyalty to the organization are not in vain. There are, however, signs of discontent.

The people of Ohio are strong in their political affiliations but they can be independent when they wish. When once awakened they will not hesitate to act. At that not far distant time will Ohio, like Minnesota and Wisconsin, pass a primary law that will be a primary law in fact as well as in name.

THE CHICAGO PRIMARY SYSTEM.

BY DR. CHARLES EDWARD MERRIAM, UNIVERSITY OF CHICAGO.

The primary law governing Chicago was enacted in 1898, and, although some minor amendments have been made, remains substantially the same as when it was first put in force. This law is in the first place optional and may be adopted by a majority vote of any county, town or city. In counties having a population of 125,000 (of which Cook County is the only example) it is mandatory. So far the system has been voluntarily adopted by the counties of Coles, Kane and La Salle. When adopted in any county or city, the system applies to the nominations of all parties polling ten per cent of the total vote for Governor at the last election in the given district.[1] In regard to the time of the primary, the law provides that it must be held within the five months preceding the fall or the four months preceding the spring election, but not later than six days before election certificates are due. The exact date is fixed by the central committee of the party concerned, but no two party primaries may be held on the same day. Notice of the intended primary must be filed with the Election Commissioners fifteen days in advance. This must contain the name of the party and the address of its headquarters, the day of the primary, the name, time and place of the conventions for which delegates are to be chosen, a description of the primary districts, the names of the judges and clerks and the location of the polling places, the number of delegates from each district and the name of a newspaper recom-

[1] This now applies to the Socialist party in Chicago.

mended for general publication of the notice. Further notice is given by the Election Commissioners who publish and cause to be posted ten days before the primary in each primary district placards containing the essential facts regarding the nature of the primary.

Primary districts are made for each party by the Election Commissioners upon recommendation of the party central committee, and in reality of the ward committeeman. These districts are formed by combining from two to seven election precincts, containing not more than 800 voters of the party in question. Polling places are also selected by the same process. The judges are taken from the regular list of election judges within the district, Republicans for Republican primaries and Democrats for the Democratic. They are appointed, paid and, if necessary, punished in the same way as the regular judges of the election.

In order to take part in any primary, one must be qualified to vote at the next election, must be a registered voter and reside within the district. He must not have signed any nomination petition for the next election, nor have voted in the primaries of another party within one year preceding the primary. If the vote of an individual is challenged, he may make affidavit, supported by two householders in the district, that he is a member of the party, in which case his vote must be accepted. In practice very few challenges are made, for reasons which are evident.

Delegates must be qualified voters and cannot serve as judges or clerks in the primary. The name of a person may not be used on any ticket without his consent, under penalty of the law. Delegates are chosen from each primary district to ward, town, city, county, legislative, Congressional, and State conventions. The old method of electing delegates to choose other delegates to a convention is eliminated, and all are chosen directly.

The polls are open from twelve until seven o'clock. Ballots are furnished at private expense, the law merely requiring that they shall be of a fixed sixe (8 x 8 inches) and white. The Australian ballot system is not employed, and the vote is not in any sense secret.

On the ballot the name of the candidate or candidates for whom the delegates are pledged may appear at the head of the group of delegates; as for example, "For Governor Charles S. Deneen."[2] A regular canvass of the votes is made and returns sent in to the Election Commissioners on forms provided for that purpose. A recount may be had on showing of proper and sufficient cause.

All the provisions and safeguards of the regular elections apply to the conduct of the primary unless and except as otherwise specified. Misconduct by judges, interfering with ballots, bribery, assault, interfering with judges, illegal voting, fraudulent ballots, are specifically forbidden. In addition to these certain other offences are singled out; for example, waiting in line if knowingly unqualified to vote, taking a place in the voting line without voting when the opportunity comes, repeatedly surrendering one's place in the line to others. Policemen are detailed to the various polling places, and the Election Commissioners keep in close touch with the primary as it progresses.

Still further provisions are made in the law regarding the convention. This must be held within the district for which candidates are to be placed in nomination. A majority of the delegates constitutes a quorum. Officers of the convention must be chosen by a roll call of

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[2] In 1903 the Election Commissioners instructed the judges and clerks that, where the "union delegate" plan was used, they should return the number of votes cast for the candidates whose names were placed at the head of the delegates. This made it possible to vote for identical delegates differently pledged.

districts or wards, and if the vote of the ward or district is challenged, a poll of the delegation must be made. As credentials are issued by the judges of election to the delegates there is little room for contests over seats in the convention.[8]

The machinery of the primary elections is in charge of a Board of Election Commissioners, three in number, appointed for a term of three years by the judge of the County Court. There is also a Chief Clerk, who is in active charge of the work, and a corps of officials varying in number with the needs of the office. This Board supervises the conduct of the regular elections as well as the primaries, and it is as diligent in safeguarding the one as the other. When the primary law first went into operation there was considerable trouble over its enforcement, but a vigorous administration has reduced these difficulties to a minimum. The knowledge that the Commissioners are on the alert and that they are backed by the County Court is sufficient to deter many attempts to interfere with the proper operation of the law. As will be shown later, there are weak spots in the law, but so far as the law goes it is enforced.

The number of voters brought out by this system varies widely as popular interest in the contest varies. As small a number as 20,000 have participated and as large a number as 100,000. The high water mark was reached in the spring of 1904 when the fight between Lowden and Deneen in the Republican party, and the three-cornered contest between Harrison, Hearst and Hopkins in the Democratic ranks, brought out a heavy vote. Each party cast over 100,000 votes at the primaries, while the

[8] The primary law does not apply to the State convention, and delegates elected from Chicago to the Democratic State convention in 1904 were unceremoniously unseated on various trumped-up charges.

Republicans cast 208,689 and the Democrats 98,765 in the fall election following.

On the whole the percentage varies from 25 to 50. These figures do not, however, indicate accurately the degree of interest aroused, for there is many a district in which there is no contest. Where only one set of delegates is named, there is naturally no particular reason for bringing out a full vote.

In the operation of the law, a number of defects have been discovered. In the first place the ballot is not secret, but practically public. The law prescribes that the ballots shall be 8 x 8 inches and white. It has been found easy, however, to provide one set of ballots that are of thin material, smooth finish and dead white, while others are of thicker material, rough finish and slightly yellow or cream color. This is sometimes done in such a way that the challengers know just how each man casts his vote. Thus the secrecy of the ballot is destroyed, and all the evils that led up to the adoption of the Australian ballot system in the general elections are made possible in the primary. There is a general sentiment in favor of the application of the Australian ballot system to the primaries, and it is likely that this will soon find its way into the law.

Another difficulty is that arising from a lack of a test of party allegiance. No previous declaration of party preference is required and there is not sufficient guaranty that Republicans shall not participate in Democratic primaries or *vice versa.* The voter may be challenged, it is true, but a challenge is a rare occurence—is in fact, as primaries go, a curiosity. It is a very delicate matter to challenge a voter, for it may happen that he actually has changed his politics, in which case nothing is more likely than that his wrath would be kindled against the party with which he now intends to affiliate himself, or at least against the particular representative of the party

who had made the challenge. There are many in Chicago who favor the adoption of some system of party enrollment. Some support enrollment because of a belief that it would help to keep the "independents" out of party politics, and others because they think it would help to eliminate the "floaters."

In some quarters there is criticism of the law because of the hours during which the polls are opened—from 12 to 7. As most voters are down town during the day, the bulk of the vote is concentrated in the hours from 5 to 7. In unfavorable weather it may happen that men are discouraged by the prospect of a long wait with no certainty of a vote after all. In other cases the crush is so great toward 7 o'clock that the polls may close with many still standing in line.

Another feature of the law which is somewhat unfortunate is the opportunity for gerrymander of the primary districts. These districts are formed by the Election Commissioners on the recommendation of the ward committeeman who in turn represents the faction in power in the party concerned. It is but human to use this power for the advantage of the element in control. Any one familiar with the workings of practical politics will readily see that this power is a valuable asset. If the districts are fairly compact, contiguous and of the right population, the Election Commissioners cannot well go into the question of factional intention or result. It is not easy to see, however, just how this difficulty may be obviated.

Furthermore, there is a strong sentiment in Chicago for the development of the present primary law in the direction of a direct primary. The reasons urged for this may be very briefly stated. In the first place the present plan gives no opportunity for instruction of delegates, except for the head of the ticket, while the other names are determined by informal conferences in which the part

of the individual delegate is comparatively unimportant. Other difficulties are the not infrequent return of delegates absolutely uninstructed, and the instruction of delegates for local candidates whom it is not intended to nominate, but who serve the useful purpose of preventing anyone else from breaking into the district. The tendency of the system to make the primary contest a personal one between different sets of neighbors, rather than between different policies or principles is also to be deplored.

On the whole, the Chicago law gives publicity regarding the primary and guarantees a fair count. There is no good excuse for the failure of any citizen to know when, where and for what purpose primaries are being held; there is nothing to prevent his participation in the primaries; there is no reason to doubt that the votes are fairly counted as cast. The operation of the entire system is carefully and effectively supervised by the Board of Election Commissioners, and there is little or no complaint of the workings of the law as far as it goes. There is, as I have already indicated, plenty of room for improvement still, but the present system is a long step away from the old days of "brace caucuses" where fraud and force ruled.

CONSTITUTIONAL LIMITATIONS ON PRIMARY ELECTION LEGISLATION

BY FLOYD R. MECHEM, PROFESSOR OF LAW, UNIVERSITY OF CHICAGO.

In determining what aspect of the general question I should discuss in the brief time available, it seemed to me desirable that I should confine my attention to the constitutional aspect of the matter, leaving the discussion of the practical workings of the various laws actually enacted to those who have had more opportunity to observe them. The constitutional side of the matter has already been very ably discussed by Professor Tuttle in MICHIGAN LAW REVIEW,[1] and I do not hope to add materially to what is there said, though certain of the questions may be approached in a somewhat different way.

In dealing with this constitutional aspect it is necessary to observe at the outset, that with very few exceptions, our constitutions are entirely silent upon the question of conventions, caucuses, and nominations. The whole question is so new that most of the existing constitutions, like that of Michigan, which went into effect in 1851, were enacted before the present interest in the matter had arisen. Under these circumstances, then, in most States, if any constitutional limitations exist they must be deduced from provisions of the constitution directed more immediately to other matters.

In California, however, since this question first arose, so many constitutional difficulties were found to be in the way of desired legislation[2] that the constitution has been amended so as to confer the power to legislate upon the subject in quite a radical way.[3] In

[1] 1 MICHIGAN LAW REVIEW, 466.

[2] See Spier *v.* Baker, 120 Cal. 370, 52 Pac. 659; Britton *v.* Board of Commissioners, 129 Cal. 337, 61 Pac. 1115; Marsh *v.* Hanly, 111 Cal. 368.

[3] Art. II, Sec. 2½—"The Legislature shall have the power to enact laws relative to the election of delegates to conventions of all political parties at elections known and designated as primary elections. Also to determine the tests and conditions upon which

a few other States, as, for example, in Mississippi, recent constitutional provisions have enjoined upon the legislature in a general way the duty to "enact laws to secure fairness in party primary elections, conventions and other methods of naming party candidates."

Where no such express constitutional provisions are found, the questions arising must usually be determined by reference to the general provisions respecting the right to vote and the power of the legislature to make regulations to protect or enforce it.

The right to vote under our political system is not a natural or inherent one, but must be conferred and regulated by the constitutions of the States. Since the federal government has no distinct body of voters of its own, the whole matter must be controlled by the State constitutions, and since it is a general rule of constitutional interpretation that an enumeration of the required qualifications by the constitution is a prohibition upon the requirement of any others, it necessarily follows that whatever the State constitutions provide must usually be both exclusive and conclusive of the whole matter and that the legislature can neither add to nor subtract from the provision so made.

Now, the actual provisions in most of the State constitutions are not very extensive. They consist usually of a specific declaration as to who shall be entitled to vote and of such general declarations as that all elections shall be free and equal, that no religious or political tests shall be imposed, that voting shall be by ballot, and that the legislature may pass laws to protect the purity of the ballot and to secure the free exercise of the elective franchise. In some of the

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electors, political parties, or organizations of voters may participate in any such primary election, which tests or conditions may be different from the tests and conditions required and permitted at other elections authorized by law, or the Legislature may delegate the power to determine such tests or conditions, at primary elections, to the various political parties participating therein. It shall also be lawful for the Legislature to prescribe that any such primary election law shall be obligatory and mandatory in any city, or any city and county, or in any county, or in any political subdivision, of a designated population, and that such law shall be optional in any city, city and county, county, or political subdivision of a lesser population, and for such purpose such law may declare the population of any city, city and county, county, or political subdivision, and may also provide what, if any, compensation primary election officers in defined places or political subdivisions may receive, without making compensation either general or uniform."

States there are also express provisions authorizing the enactment of laws to secure the registration of voters.[4]

Under provisions of this nature it is everywhere held that the legislature has no power to enact any law by which the right of the citizen to vote or to hold office, as so conferred by the constitution, shall be in any way denied or substantially qualified or restricted. At the same time it is also everywhere held that the legislature has implied power to enact reasonable regulations for the purpose of protecting, and securing the peaceable and orderly exercise of, the constitutional rights conferred. This question has frequently arisen in respect to the right of the legislature to enact registration laws, and it has practically everywhere been held that, even in the absence of express constitutional authority, the legislature has the implied power to enact fair and reasonable regulations not materially infringing upon the voter's constitutional right. The same question has also arisen many times under the recent Australian ballot laws, and the power to require an official ballot and to regulate its use has been sustained as a measure designed to promote and protect the voter's right, wherever it appeared that under the guise of regulation his right has not been substantially impaired.[5]

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[4] The most important of these provisions are here summarised:

Voting shall be by ballot in Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

The following States *require* registration: Delaware, Florida, Georgia, Louisiana, Maryland, Mississippi, Nevada, North Carolina, Virginia, Wyoming.

In Kentucky, Missouri, Texas, and Washington, registration is *required* in towns and counties having more than a specified population.

Alabama *permits* the passing of registration laws; Kentucky and Missouri *permit* it in counties where it is not required.

The constitutions *require* that elections shall be free and equal in: Arkansas, Connecticut, Delaware, Idaho, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Missouri, Montana, Nebraska, New Hampshire, North Carolina, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wyoming.

In Alabama, Colorado, Delaware, Florida, Mississippi, Texas, West Virginia, and Wyoming, laws are *required* for preserving the purity of elections, and Michigan *permits* such laws.

[5] Thus in Independence Party Nomination, — Pa. St. —, 57 Atl. Rep. 344, it is said by Mitchell, C. J.: "The Constitution confers the right of suffrage on every citizen possessing the qualifications named in that instrument. It is an individual right, and each elector is entitled to express his own individual will in his own way. His right cannot be denied, qualified, or restricted, and is only subject to such regulation as to the manner of exercise as is necessary for the peaceable and orderly exercise of the same right in other

It is in view of these general constitutional provisions and the rule for interpreting the legislative power already referred to, that the question of the enactment of laws governing the nomination of candidates for political office must be considered.

Where the number of voters is small and the issues simple it is conceivable that the voters may go to the polls and vote without any previous conference or agreement as to the men or measures to be supported. Such action is likely to result in much scattering of energy and in many ill considered consequences. There is therefore great practical necessity for coöperation and previous conference as to how the franchise may be most advantageously exercised, and this leads naturally to the previous suggestion of the men and measures to be supported or to the making of nominations and the adoption of platforms.

Nomination, as its name implies, is the naming or suggesting of some person as a candidate for office. It may be done by the candidate himself or by others. As a fact, in our political system, it has come to mean usually the naming of a candidate by caucus or convention of persons belonging to a political party, under an express or implied understanding that a majority of those present shall determine the selection, and a general understanding also that all members of the party will at the polls support the candidate nominated by the caucus or convention.

These "understandings" that the majority shall control the nomination and that the party will support the nominee are the essence of the system. Under such a system the nomination by a dominant party is practically equivalent to an election, the function of the voters becoming little more than a mere ratification of the selection by the convention.

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electors. The Constitution itself regulates the times, and, in a general way, the method, to wit, by ballot, with certain specified directions as to receiving and recording it. Beyond this the Legislature has the power to regulate the details of place, time, manner, etc., in the general interest, for the due and orderly exercise of the franchise by all electors alike. Legislative regulation has been sustained on this ground alone. DeWalt *v.* Bartley, 146 Pa. 529, 24 Atl. 185, 15 L. R. A. 771, 28 Am. St. Rep. 814. Anything beyond this is not regulation, but unconstitutional restriction. It is never to be overlooked, therefore, that the requirement of the use of an official ballot is a questionable exercise of legislative power, and, even in the most favorable view, treads closely on the border of a void interference with the individual elector. Every doubt, therefore, in the construction of the statute must be resolved in favor of the elector."

Now, the constitutional right to vote involves not merely the right to vote for or against a suggested individual or measure—it involves also the right to propose men or measures, at least so far as the voter's own action is concerned. It is not merely a right to vote for or against the person or plan of some other person's choice, but it involves the right in the voter to take the initiative and to vote for the men and measures of his own choice.

It is therefore true, as has often been pointed out, that the right to vote necessarily involves the right to nominate,[6] and that the right to nominate is an essential and inseparable part of the right to vote. The right to nominate therefore becomes a constitutional right, and any law which denies to the voter the right to determine for whom he shall vote must be void.

If the voter's constitutional right thus includes the right of initiative, it must also be true that he may exercise it either independently or in coöperation with others. He may stand aloof from parties or may unite with others of like mind to form a party at his pleasure. He may not force himself into an existing party without its consent, nor, on the other hand, can he be forced into a party without his own consent. The voter has not only the right to act on his own account, but he certainly may confer with other voters as to the ends to be accomplished.

Under the Constitution of the United States and the constitutions of practically all of the States, the right of the people to assemble and consult is expressly guaranteed. There is, it is true, as has been pointed out by my colleague, Dr. Freund, in his able book upon the "Police Power,"[7] no express declaration in our constitutions of a right of association; but notwithstanding this, it is, I believe, entirely safe to say that the right of the people to associate for lawful social, business or political purposes, subject to the general supervision of the State under its police power, is a constitutional right fairly to be deduced from the rights of assembly and liberty of action which our constitutions confer. Our whole system recognizes that voters will act in groups, and while parties are not expressly provided for, the fact that the majorities are to control clearly presupposes the division

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[6] See De Walt *v.* Bartley, 146 Pa. 543, 24 Atl. 185, 28 Am. St. Rep. 814, 15 L. R. A. 771.

[7] Freund on Police Power, §§ 481-484.

79 Va. 196, 52 Am. Rep. 626.

of the people into groups or parties. Concerted action and assembly to consult naturally give rise to parties.

The State cannot prescribe political views to any individual or group of individuals. Neither can the State, in general, impose any political test either to individuals or to groups of individuals. Freedom of political action is everywhere assured, and the exercise of political privileges cannot be made subject to discriminating laws, or to any political creed or party affiliation.[8]

If this right of the people to coöperate and associate for political purposes is a constitutional privilege, then certain other privileges must be incident to it. If there are any such incidental rights, the right of existence must be paramount, including therein the right to maintain that existence. If such an existence is to be maintained, the right of membership must be voluntary, the associates must have the right to prescribe the tests for association with them and must be able to exclude those who are hostile to their own views and purposes. In the language of the Supreme Court of California, in *Britton* v. *Board of Commissioners*,[9] "the right of any number of men holding common political beliefs or governmental principles to advocate their views through party organization cannot be denied. As has been said, 'self preservation is an inherent right of political parties as well as of individuals.'[10] A law which will destroy such party organization or permit it fraudulently to pass into the hands of its political enemies cannot be upheld." For similar reasons the determination of all questions relating simply to party aims, principles, or policies must be left to the parties themselves to determine.[11]

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[8] See Attorney General *v.* Common Council, 58 Mich. 213, 55 Am. Rep. 675; People *v.* Hurlbut, 24 Mich. 44, 9 Am. Rep. 103; Baltimore *v.* the State, 15 Md. 376; Brown *v.* Haywood, 4 Heisk. 357; Evansville *v.* the State, 118 Ind. 426; Louthan *v.* Commonwealth,

[9] 129 Cal. 337.

[10] Whipple *v.* Broad, 25 Colo. 407.

[11] The interesting question, much discussed of late, as to the power of the courts to determine controversies arising within the party over the regularity of proceedings, the right to use party names and emblems, the recognition of rival factions, and the like, instead of leaving them solely to the arbitrament of the party tribunals, is not within the scope of this paper. Some of the more important recent causes involving it, are: State *v.* Houser, — Wis. —, 100 N. W. Rep. 964; State *v.* Metcalf, — S. Dak. —, 100 N. W. Rep. 923; State *v.* Larson, — N. Dak. —, 101 N. W. Rep. 315; Allen *v.* Burrow, — Kan. —, 77 Pac. Rep. 555 (where many other cases are collected); Beasley *v.* Adams, — Ky. —, 82 S. W. Rep. 249; State *v.* Weston, 27 Mont. 185, 70 Pac. Rep. 519; People *v.* District Court, — Colo. —, 74 Pac. Rep. 896; Rose *v.* Bennett, 25 R. I. 405, 56 Atl. 185; Stephenson *v.* Election Commissioners, 118 Mich. 396, 42 L. R. A. 214; Phillips *v.* Gallagher, 73 Minn. 528, 42 L. R. A. 222.

But even though we concede to the utmost extent the right of parties to exist and coöperate for political purposes, does it necessarily follow that the State is bound to recognize the party as such in devising the machinery for nominations or elections? In my judgment, that question must be answered in the negative.

The right to associate is one thing, the right to vote is another and entirely different thing. The right to vote is an individual right; it is not given to parties. Association for political purposes necessarily leads to partisan association. The right to vote is entirely non-partisan.

It is entirely possible for the State to accomplish all the ends designed to be secured by the elective franchise without recognizing in any way the existence of a political party or a partisan organization. It is not at all essential to the exercise of the right to vote that party names or party emblems shall appear upon a ballot.

Where the voters are left free to prepare their own ballots, the State need not concern itself with the question whether the voters are grouped into political parties or not. It is only when the State undertakes to prepare the ballot and make its use alone mandatory, that official recognition of political groups or parties becomes necessary. In some way now the names which are to appear upon the ballot must be suggested; practical convenience demands that similarity of desire in this respect of large groups of voters shall be recognized; and while it is not at all essential even now that party names or emblems be recognized, the recognition of the fact of more or less organized groups becomes practically indispensable.

Party names and party emblems are, however, exceedingly important. They appeal to the sentiment of some; they aid the recollection of others; and they guide the course of those whose mental infirmities are such that vision must come to the aid of other faculties for discernment.

Even, however, if political parties are not indispensable; even if they have no constitutional right to recognition as such at the polls, the fact of their existence and potency among us is one which cannot be ignored or disregarded. They dominate the legislatures which are to enact primary legislation; they have strong hold upon the judges who are to construe the laws so made; and more than all their existence, their principles and their methods have become an inherent and permanent factor in our national life.

Every measure thus far proposed for primary legislation has taken the existence of the parties into account in greater or less degree. And while to some extent non-partisan elections may be realized under local conditions, it is, in my judgment, idle to believe that any of us will live to see any marked decadence of the power of political organization among us.

Our problem then becomes this: Conceding the right of parties to exist; denying, as I think we may, however, their constitutional right to be recognized as such in framing the machinery for nominating and voting; but conceding also that they are even in this field exceedingly active if not dominant, how far may the legislature go in framing rules to regulate primary elections without infringing either the constitutional right of the individual voter, or the constitutional rights of groups of voters.

I. In the first place it may be noticed that parties would, for example, be subject to police regulation. All individual action is so subject, and the united action of many individuals may make it all the more necessary. Thus tumultuous meetings may be dispersed, and revolutionary or incendiary associations may be suppressed, without interfering with any constitutional right.

So regulations designed to protect and preserve the constitutional rights are unobjectionable so long as they do not really amount to a substantial and unreasonable interference with or denial of the right. It is upon this ground that registration laws are sustained.

If, in pursuance of a design to regulate, the State should undertake to provide a general scheme for making nominations, there are many things that could certainly be done without interfering with constitutional privileges. Regulations designed to suppress disorder, prevent fraud or intimidation, to facilitate the determination of the result, to secure proper evidence of the result, and the like, could be objected to by no one. Regulations designed to protect party organization, to protect their names, symbols, etc., are also unobjectionable.[12]

II. The State may also require that all nominations shall be made under official regulation, and decline to recognize nominations made by the methods adopted by the parties or by individuals, so

[12] See Davidson *v.* Hanson, 87 Minn. 211, 92 N. W. Rep. 93.

long as reasonably convenient and available opportunities are afforded to all.[13]

This is, of course, the crux of the whole matter. But if we deny the power of the State in this regard, we must do so either because it infringes upon the right of the individual voter or of the party. So far as the individual voter is concerned, nothing more is involved here than has frequently been sustained in the way of registration and official ballots; while so far as the party is concerned, if we are right in holding that any constitutional right of association goes no further than to secure freedom of conference, assembly, advice and suggestion, then no constitutional right of the party is denied.

Under such official regulations, as is pointed out by the Supreme Court of Oregon,[14] "the right of the adherents of the respective parties to assemble and consult together for their common good is in no way infringed upon, and they may still advocate and promulgate political doctrines and principles without restriction, so that it is done in a peacable manner, and does not tend to moral obliquity, the infraction of the law, or the destruction of the government itself."

The same idea was declared by the court in Mississippi: "Conventions, if necessary for the declaration of party principles, may be called and held, but they cannot be used, under our present law, for the making of party nominations for office."[15]

III. Such regulations make necessary the definition and the classification of parties. What shall constitute a "party"? How many voters must it include? Are all to be treated alike? With respect of these questions, there is room for difference of opinion, if not more.

Classification is not necessarily discrimination, though it may easily lead to that. So long as classification is based upon real differences, it injures no one. It simply follows where nature leads. But classification based upon artificial and arbitrary distinctions is unjust, and if it be made the ground for exclusion from legal privileges, it is illegal and unenforceable.

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[13] Ladd *v.* Holmes, 40 Oreg. 167, 66 Pac. 714, 91 Am. St. Rep. 457; Commonwealth *v.* Rogers, 181 Mass. 184, 63 N. E. Rep. 423; Hopper *v.* Stack, — N. J. L. —, 56 Atl. Rep. 1; People *v.* Democratic Committee, 164 N. Y. 335, 58 N. E. Rep. 124, 51 L. R. A. 674; State *v.* Jensen, 86 Minn. 19; Primary Election Case, 80 Miss. 617, 32 So. Rep. 286.

[14] Ladd *v.* Holmes, 40 Oreg. 167, 66 Pac. 714, 91 Am. St. Rep. 457.

[15] Primary Election Case, 80 Miss. 617, 32 So. 286.

Most of the proposed primary election laws have made distinctions based upon numbers. Are such distinctions valid? In *Britton* v. *Board of Commissioners*[16] the question was very fully discussed, and the court emphatically denied that distinctions in this respect may be based upon mere numbers. In *State* v. *Jensen*,[17] on the other hand, the court said, "We are of the opinion that the legislature may classify political parties with reference to differences in party conditions and numerical strength, and prescribe how each class shall select its candidates; but it cannot do so arbitrarily, and confer upon one class important privileges and partisan advantages and deny them to another class, and hamper it with unfair and unnecessary burdens and restrictions in the selection of its candidates. While it seems to some of us that the percentage of the vote selected as the basis of the classification in this act is larger than necessary, yet it was a question for the legislature, and we are not justified in holding that the classification was arbitrary." With these views of the Minnesota court I entirely concur.

IV. Where the Australian ballot law is in force, practical convenience may require limitation upon the number of party tickets which will be *printed* upon the ballot. This does not mean that there might be exclusion from the ballot of the name of any party or candidate, but only that the State would *print* only certain ones, leaving others to be written in by the voters who so desire.

That any party, however small, is entitled to have its candidates represented in some way, is believed to be the only sound and right rule. It is true that it has been held that the voter's right of choice may be limited to those whose names are printed upon the ballot,[18] but this rule is believed to be not only opposed to the weight of authority but entirely unsound.[19]

V. Under the power of classification, the State may provide that some parties shall make their nominations in one way and some in

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[16] 129 Cal. 337.

[17] 86 Minn. 19.

[18] Chamberlain *v.* Wood, 15 S. Dak. 216, 88 N. W. 109, 91 Am. St. Rep. 674. Compare State *v.* Johnson, 87 Minn. 221, 91 N. W. Rep. 840; Commonwealth *v.* Reeder, 171 Pa. St. 505, 33 Atl. 67.

[19] See State *v.* Dillon, 32 Fla. 545, 14 So. 383; Sanner *v.* Patton, 155 Ill. 553, 40 N. E. 290; People *v.* Shaw, 133 N. Y. 493, 31 N. E. 512; Bowers *v.* Smith, 111 Mo. 45, 33 Am. St. Rep. 491; note to 91 Am. St. Rep. 682.

another. It may, for example, concede to the larger parties only the right to nominate by convention and require the smaller ones to nominate by petition. That this involves some inconvenience to the smaller parties cannot be denied, but mere inconvenience, so long as it does not amount to a substantial interference with the right, does not furnish ground for effectual complaint.[20]

This conclusion, it is true, has not passed unchallenged. That such distinctions may be made was denied by the Supreme Court of California,[21] but power to make them in that State has since been expressly conferred by constitutional amendment;[22] while courts in other States have not thought the distinction beyond the power of the legislature under existing constitutions.[23]

VI. Any primary election law which contemplates party caucuses or conventions necessarily involves the fixing of some test by which to determine who are to be permitted to participate in a party's action.

At this point it is necessary to make a distinction which I think is too often overlooked by those who discuss primary election laws, namely, the difference in the situation of the voter. The voter goes to the ordinary election merely in the character of a voter; he goes to a political caucus or convention necessarily in the character of a partisan. At the ordinary election, the qualified voter may go and vote and no one has the right to inquire as to his political views; a party primary election is necessarily a partisan matter, and no one has any business there if he does not belong to that party.

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[20] Commonwealth *v.* Rogers, 181 Mass. 184, 63 N. E. 423.

[21] Britton *v.* Board of Commissioners, 129 Cal. 337.

In this case the court said: "Political conventions are, after all, but public assemblages of the people, having for their end the discussion of ways and means for the public good. By the declaration of rights of the constitution of this State the people have the right to assemble freely to consult for the common good, to instruct their representatives and to petition the legislature for redress of grievances. (Const., Art. I, Sec. 10.) No citizen or class of citizens shall be granted privileges or immunities which upon the same terms shall not be granted to all citizens (Const., Art. I, Sec. 21), and all laws of a general nature shall have a uniform operation. (Const., Art. I, Sec. 11.) How can it be said that a law which protects by legislation a certain number of citizens forming one political party, and deprives a fewer number of citizens forming another political party of the same protection, is not violative of these provisions? Or how shall it be said that a man belonging to a party holding certain political principles may not participate in a primary election, when his neighbor of different political faith is accorded the right so to do?"

[22] Article II, Sec. 2½.

[23] See State *v.* Jensen; Com. *v.* Rogers; Ladd *v.* Holmes, cited *supra*. See also: DeWalt *v.* Bartley, 146 Pa. 543, 28 Am. St. Rep. 814; State *v.* Kinney, 57 Ohio St. 221; Corcoran *v.* Bennett, 20 R. I. 6; Miner *v.* Olin, 159 Mass. 487.

At the ordinary election, the voter is entitled to a secret ballot, and the secrecy extends not only to the names upon the ballot, but also to the political status of those voted for. At the party primary election, while the voter may maintain secrecy as to the names upon his ballot, his political complexion is disclosed, if in no other way, by the very fact of his presence at a partisan convention.

If partisan caucuses or conventions are to be held, it is, as has been said, a matter of vital consequence to determine who are entitled to participate in them. Party organization and party lines cannot be maintained unless the integrity of party views may be preserved. Each party must be left free to determine for itself what are to be the principles for which it stands. Certainly the legislature has no power to prescribe them.

If parties are to be recognized, they must in general have the right to exclude from participation in their action those whose views are hostile to the party principles. Legislation, therefore, which, while purporting to recognize parties, attempts to give the right to any one, however opposed, to participate in their party proceedings, must be invalid. As said by the Supreme Court of California in *Britton* v. *Board of Commissioners*,[24] "a law authorizing or even permitting the opponents of an organized political party to name the delegates to the nominating convention of that party could not for a moment be countenanced."

Even though we may concede all this, however, it does not necessarily follow that the legislature has no legitimate function to perform in determining who may participate in purely partisan conventions. The disorder and violence resulting from conflicting claims are certainly to be suppressed, and, though the legislature may not have the right to determine who are to be regarded as members of the party, it certainly may aid the parties in preserving their own autonomy by forbidding any one, not a member, from attempting to participate in the party proceedings.

Such legislation, of course, makes necessary the fixing of some sort of test as to party allegiance. What shall it be? and who shall prescribe it?

If what has already been suggested be sound, any affirmative test, namely, that such and such persons *shall be admitted* to the party, can properly come only from the party itself; but a negative test,

[24] 129 Cal. 337.

such as, for example, that no person, not a member of the party, shall have the right to participate in party proceedings, would seem to be within the legislative power as a regulation designed to protect and preserve party rights.

When the legislature begins to prescribe this sort of test, however, the question may arise whether it interferes, not with the rights of the party, but with the rights of the individual. Has the individual the right to change from one party to another—at least, so long as that party does not object? It would seem that there can be no reasonable doubt that he has such a right. If so, can a test be upheld that unreasonably interferes with that right? If we answer that question in the negative, what constitutes such an unreasonable interference?

Many of the statutes propose a test based in whole or in part upon past action.[25] Thus the statute of Minnesota, for example, requires that the person offering to vote shall take an oath (if challenged) not only that he is now affiliated with the party and proposes to be

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[25] The most important provisions actually made are the following: In Florida, Georgia, Kansas, Kentucky, Louisiana, Massachusetts, Michigan (under the general law), Mississippi, Nevada, North Carolina, South Carolina (except in counties of over 40,000 inhabitants), Ohio, Rhode Island, Tennessee, Utah, Washington, qualifications for voters, in addition to legal requirements, are prescribed by the political committee holding the primary. In Minnesota, New Jersey, and Oregon, the voter must have supported the party ticket, generally, at the last election, and intend to support it at the next. In Idaho, Illinois, and Nebraska, support at the last election only is required. In California, Montana, New Hampshire, New York, and Maryland, except in Baltimore, an intention of support at next ensuing election is necessary. In Connecticut, Maryland (in Baltimore), Iowa, and South Carolina (in counties of more than 40,000 inhabitants) a party registration is required previous to the primary. In Arkansas, Indiana, South Dakota, North Dakota, and Texas, no mention of party qualifications is made.

Wyoming requires that a voter's political faith be in accordance with the party; West Virginia, that the voter shall be a "known, recognized, openly declared member of the party." In Colorado, any legal voter may vote who is not, at the time of the primary, a member in good faith of another party. In Maine, the request of fifty people secures the use of voting lists as a check list for party membership. In Virginia, the voter must have already registered for the next succeeding election. Rhode Island, in addition to regulations of the party, requires that the voter shall not have taken part in a caucus or voted in an election for the candidates of another party, within fourteen calendar months. Massachusetts forbids a committee to prevent a voter from participating in a primary because he has supported an independent candidate for office.

In Kent County, Michigan, the voter must make oath that he is "in sympathy with the aims and objects of said party and will support its principles and objects." In Grand Rapids, he may vote with the party "with which he then and there states he is affiliated." In Wayne County, he is required to make oath that he is "a member of the ———— party and is in sympathy with its aims and objects."

so at the next election, but that he "generally supported its candidates at the last election."

If past action is to be made the test, two objections may be urged against it. First, it may be made the excuse for violating the secrecy of the ballot by requiring the voter to disclose how he voted, though under the laws thus far framed the disclosure required is so general as not to be very objectionable;[26] and, secondly, it is evident that the period covered may easily be such as to unreasonably preclude a voter who has recently changed his party views from participating in the convention of the party with which he now desires to affiliate. To change one's political views and party affiliations must be not only a matter of highest policy but of constitutional right, subject only to those rules of good order and of practical convenience which the State finds it necessary to prescribe in order to administer the laws.[27] If the test based upon past action were the only reasonably appropriate one, it might perhaps be sustained even though it should occasionally prevent a particular voter from participating for a time in any party proceedings. But if another equally efficacious one may be found which does not thus prevent, it certainly is to be preferred. Present and future intention rather than past action should in general be the test. In New York it is required that the voter, if challenged, shall declare that he has a bona fide present intention of supporting the nominees of that political party at the next ensuing election, and that he has not enrolled with, or participated in the primary of, any other party since the first day of the preceding year; and this has elsewhere been approved.[28]

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[26] This was urged as an objection in the recent case in New Jersey, Hopper *v.* Stack, — N. J. L. —, 56 Atl. Rep. 1. The New Jersey constitution, however, does not provide for voting by ballot, which has elsewhere been construed to guaranty a secret ballot. Said the court: "The right to a secret ballot is not a constitutional right; it is given and may be taken away by legislative enactment. Ransom *v.* Black, 54 N. J. Law, 446, 24 Atl. 489, 1021, 16 L. R. A. 769. The argument, therefore, that the affidavit to be made by a challenged voter violates any natural or constitutional right to secrecy possessed by him, is entirely without foundation. Moreover, as the voter is not required to say for whom he voted, but only that he voted for a majority of the candidates of the party with which he claims to act, it is difficult to see wherein such partial avowal is any more inimical to secrecy than is the open and avowed partisan co-operation that has hitherto constituted the voter's credential."

The latter portion of this answer, although mere *dictum* here, would, of course, be applicable even in States providing for a secret ballot, and would seem to be sufficient if a test based on past action is to be sustained.

[27] See 1 MICHIGAN LAW REVIEW, at p. 499.

[28] In Ladd *v.* Holmes, 40 Oreg. 167, 66 Pac. 714, 91 Am. St. Rep. 457.

Moreover, even though it be conceded that the legislature may not prescribe tests which shall insure admission to party membership, it does not follow that the legislature may not provide that all persons holding substantially the same views shall make their nominations at the same time or place. Certainly purely captious or caviling objections cannot be insisted upon at the expense of practical convenience in the administration of the law.

VII. As a reasonable regulation for determining who are entitled to participate in party conventions the State may doubtless require party registration. This may be open to two chief objections: *First,* It requires a voter to declare himself a partisan, and this can only be valid where it is confined in its operation to a mere condition precedent to taking part in a partisan proceeding. A man has a constitutional right not to be a partisan, but he has no constitutional right as a non-partisan to participate in partisan proceedings. *Second,* Under the guise of registration, the right itself may be impaired. Such a party registration, like the general registration, must furnish a fair and reasonable opportunity to every person entitled to register, to do so. A law which necessarily excludes classes of voters, or puts unreasonable restraints upon their registration under it, is void. So also, clearly, must be any law providing for general but not partisan registration for primary elections, which operates to exclude any who under the general election laws are entitled to vote.[29]

VIII. Where there is to be an official ballot which the State is to furnish, there must certainly be regulations to determine by whom each party's ticket which is to appear upon it shall be furnished, within what time it is to be supplied, and what shall be the evidence of its authenticity.

For this purpose it is doubtless competent for the legislature to require that each party shall have an officer or officers, of a certain kind and with certain powers, with whom, for the purposes in question, the officers of the State may deal.

But may the legislature go further and not only require the parties to provide such an officer, but also provide how he shall be chosen, and, when once so chosen, prevent his removal by any faction of the party who may differ from his political views?

[29] Spier *v.* Baker, 120 Cal. 370, 52 Pac. 659.

This question was raised and elaborately discussed under the primary law of New York. It had formerly been held that membership in the county committee depended wholly upon the regulations prescribed and enforced by the committee itself, and that a member whose views were deemed hostile to those held by the majority of the committee might be removed.[30]

After the decision in that case, however, the statute was amended. Each party was required to have a county committee, the method of electing that committee was prescribed, and it was declared that the statute should be controlling on the choice of members and on the conduct of the committee. While this law was in force a member of such a committee duly elected was removed by the committee for alleged disloyalty and hostility to the party. He brought an action to compel restoration. The trial court decided in his favor. The appellate division of the Supreme Court (four judges participating) unanimously reversed the lower court, upon the ground that the right to remove a member deemed hostile was an implied and inherent right.[31] Upon appeal to the Court of Appeals this last judgment was reversed and the judgment of the trial court, which restored him to the office, was affirmed, by a vote of four to three.

The opinion of the majority, written by Chief Judge Parker, proceeded upon the ground that the legislation in question, when read in connection with the history of preceding events, manifested a clear intention to subordinate the choice of members and their tenure in office to the terms prescribed by the statute; and that the statute was within the range of legislative power.[32]

The opinion of the minority, which contains, perhaps, as strong a statement as can be made of the contrary views, may be shown by these extracts: "It is asserted that the organization and control of a political party are no longer matters of voluntary agreement among the members of that party, but that, under the statute relating to primary elections, every party must have a county committee and that committee must be appointed and organized in the particular way prescribed by the statute. This doctrine is made the foundation for the argument that the legislature meant to deprive the general committee, or party organization, of all power, except

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[30] McKane *v.* Adams, 123 N. Y. 609, 20 Am. St. Rep. 785.
[31] People *v.* Gen'l. Committee, 52 App. Div. 170.
[32] People *v.* Democratic Committee, 164 N. Y. 335, 58 N. E. 124, 51 L. R. A. 674.

such as the statute gives in express terms. From this doctrine I dissent *toto coelo*. If the statute is to be so construed, in my judgment it is unconstitutional and void. The right of the electors to organize and associate themselves for the purpose of choosing public officers is as absolute and beyond legislative control as their right to associate for the purpose of business or social intercourse or recreation. The legislature may, doubtless, forbid fraud, corruption, intimidation or other crimes in political organizations the same as in business associations, but beyond this it cannot go. * *

"An alliance cannot be made by one person alone. It requires the action of several whose rights are equal; no one can ally himself with others solely by his volition. Therefore I do not see that an elector has any greater rights to join a party unless on the conditions that the party prescribes, than he has to insist upon entering a partnership on contributing his quota of capital, against the wish of the parties then conducting the business. * * * * *

"The liberty of the electors in the exercise of the right vested in them by the Constitution, to choose public officers on whatever principle or dictated by whatever motive they see fit, unless those motives contravene common morality and are, therefore, criminal, cannot be denied. It seems to me as absolute as the right to pursue any trade or calling, and, therefore, their right to associate and organize for that purpose is equally great. The statute of primary elections grants the right to join in the management of a party to any person on a declaration of his intention to support generally the candidates of that party, but a political organization may be unwilling to grant membership on these terms. It may make past conduct, and not future promise, the condition of membership. If the legislature can prescribe this test as a condition of membership in a party, I do not see why it may not require as a condition of voting at a Democratic primary a declaration of belief in the free coinage of silver at the ratio of sixteen to one, or of membership in the Republican party a denial of the application of the Constitution of the United States to the territories and dependencies of the country. Whether these are the fundamental doctrines of these parties, I do not attempt to say. If they are, it is for the parties themselves to so declare, not for the legislature. * * *

"The legislature may doubtless, to a certain extent, affect the subject by providing for the conduct of elections in such manner as to

render independent voting easy; but this is the extent of its power. The evil in all these things comes from the voluntary acts of the voters themselves, and can be corrected only by arousing the consciences of the electors to their responsibilities and duties. A rule which would permit interference with the liberty of an elector in his political action cannot be upheld, no matter how meritorious its object may be in a particular case.

"I think the statute of primary elections can be sustained, however, where political parties voluntarily take advantage of it, that is to say, political parties may have their organizations and primaries outside of the statute if they choose; but, if they adopt the statutory primaries held at public expense, they become subject to statutory rules. This admission does not render the views expressed as to the power of the legislature to control political organizations irrelevant to the discussion of this case; for, if the subjection of the political parties to the provisions of the statute is voluntary, we may assume that the legislature did not intend to deprive party organizations of powers that they formerly had and seem almost necessary to their practical administration; powers which they would not be likely to surrender even for the advantage of holding their primaries at public expense."

There is force in these objections, but they did not prevail, and they insist upon a greater degree of party recognition and control than parties, in my judgment, are constitutionally entitled to demand. The error which underlies them, in my judgment, is the failure to distinguish between the right of parties to exist,—to associate on such lines as they choose, select their own members, regulate their own internal affairs, consult, recommend, declare principles, adopt "platforms," suggest candidates, and make unofficial nominations,—and their right, in the face of a regulating statute, to insist that the State shall recognize their methods of exercising another legal right in preference to the methods which it, itself, prescribes.

IX. Under several of the statutes actually in force, the candidate is required to make an avowal of his candidacy, often under oath; request a place upon the ballot; and, in some cases, pay a fee ranging from ten to twenty-five dollars, presumably to defray the expense of printing the tickets. Provisions of this sort may easily be carried to the point of doubtful validity. May the voters not vote for a man

who will not seek the office and pay a fee for the printing of the ballots? A somewhat similar question arose recently in this State.[88]

The constitution of Michigan, Sec. 1, Art. 18, prescribes the oath of office, and further provides that no other oath, declaration or test shall be required as a qualification for any office or public trust. The primary election law for Kent County denied a place on the ballot to any candidate unless such candidate should declare on oath that he was a candidate.

This provision was held to be invalid. Said the court:

"This provision is not one designed for the benefit of the aspirant for public station alone; it is in the interest of the electorate as well. The provision of this law which requires that, before the name of any candidate shall be placed upon the ballot at the primary election, such candidate shall on oath declare his purpose to become such, excludes the right of the electorate of the party to vote for the nomination of any man who is not sufficiently anxious to fill public station to make such a declaration. The man who may be willing to consent to serve his State or his community in answer to the call of duty when chosen by his fellow citizens to do so is excluded, and the electorate has no opportunity to cast their votes for him. It is not an answer to this reasoning to say that the electors may still vote for such a man by using 'pasters.' We cannot ignore the fact that parties have become an important and well-recognized factor in government. Certain it is that this law fully recognizes the potency of parties, and provides for party action as a step toward the choice of an officer at the election. The authority of the legislature to enact laws for the purpose of securing purity in elections does not include the right to impose any conditions which will destroy or seriously impede the enjoyment of the elective franchise. *Attorney General* v. *Common Council,* 58 Mich. 213, 24 N. Y. 887, 55 Am. Rep. 675. We cannot escape the conclusion that the provision in question does most seriously impede the electors in the choice of candidates for office, and that it is in conflict with the provisions of Sec. 1 of Art. 18 of the Constitution. It by no means follows that reasonable provision may not be made by legislation for an initiative in placing upon the ballot the names of those to be voted for, as, for instance, by requiring a petition by a stated percentage of the voters of the

[88] Dapper *v.* Smith (Mich.), 101 N. W. 60.

party. But this provision goes farther, and precludes the voters from choosing as a candidate one who declines to himself seek the office."

Not all the States have express constitutional provisions like the one here in question, but a general principle underlies it which, it is believed, is of universal application, even though some may differ as to the soundness of this particular application of it. Some reasonable evidence of good faith, and of a willingness to accept the nomination if tendered, could not, it would seem, be fairly objected to by any one.

This brief review has, it is thought, touched upon the most important of the constitutional objections which are likely to arise in this field. If the views advanced are sound, there can be no doubt of the power of the legislature to pass all of the laws which a fair and reasonable regulation of primary elections may demand.

APPENDIX

An attempt has been made to collect here references to the primary election laws of the several States, so far as the library facilities at hand would permit.

ARKANSAS

Session Laws, 1895, page 240.

CALIFORNIA

Codes and Statutes of California (Political), 1886, Secs. 1357-1365.

Political Code of California, 1897, Sec. 1357-1365. Appendix, p. 987.

Statutes and Amendments to the Codes, 1897, pages 115-135.

Statutes and Amendments to the Codes, 1900-1901, pages 606-619.

Statutes and Amendments to the Codes, 1903, pages 49, 118, 119.

COLORADO

Laws of Colorado, 1887, page 347.

Laws of Colorado, 1891, page 143.

CONNECTICUT

General Statutes of Connecticut, 1902, page 462, Chap. 106.

DELAWARE

Laws of Delaware, 1903, Chap. 285, page 593 (purely local law).
Vol. 20 of Laws of Delaware, Chap. 393.

FLORIDA

Laws of Florida, 1897, page 62.
Laws of Florida, 1901, page 160.
Laws of Florida, 1903, page 241.

GEORGIA

Acts of Georgia, 1887, page 42.
Acts of Georgia, 1890-1891, Vol. 1, page 210.
Laws of Georgia, 1900, page 40.

IDAHO

Idaho Code, 1901, Vol. 1, Secs. 790, 791, 792, 793.
Session Laws
1899, Sec. 16, page 35.
1891, Sec. 25, page 62.
1903, page 360.

ILLINOIS

Revised Statutes, 1903, Sec. 334-395, page 874-891.

INDIANA

Burns Annotated Indiana Statutes, Revision of 1901. Vol. 3, Art. 8, page 318, Sec. 6339.

IOWA

Laws of Iowa, 1904, Chap. 40, page 29.

KANSAS

General Statutes of Kansas, 1901, Art. 11, page 593.

KENTUCKY

The Kentucky Statutes, 1899, Sec. 1550-1565.

LOUISIANA

Constitution and Revised Laws of Louisiana, 1904, Vol. 1, page 719.

MAINE

Laws of Maine, 1897, page 353.

MARYLAND

Public Local Laws of Maryland, 1888.
Vol. 1, page 379, 45.
Vol. 2, page 1687.
Laws of Maryland, 1892, Chaps. 238, 261, 508, 548.
Laws of Maryland, 1894, Chaps. 355, 384.
Laws of Maryland, 1902, Chap. 296, page 405.
Laws of Maryland, 1904, Chap. 682, page 1222.

MASSACHUSETTS

Revised Laws of Mass., 1902.
Vol. 1, Sec. 136, page 137.
"Political Party," Sec. 1, page 104.
"Caucus," Sec. 91, page 126.
Acts and Resolves, 1902, page 163, 467.
Acts and Resolves, 1903, page 471-478.

MICHIGAN

Compiled Laws, 1897, Vol. I, Chap. 93, page 1091.
Vol. 3, Sec. 11457-11469, page 3417.
Public Acts, 1899, pages 31, 308, 309.
Wayne County
Local Acts, 1895, No. 411.
Local Acts, 1903, No. 292.
Kent County (General)
Local Acts, 1901, No. 470.
Local Acts, 1903, No. 326.
Grand Rapids
Local Acts, 1901, No. 471.
Muskegon County
Local Acts, 1903, No. 502.

MINNESOTA

Statutes of Minnesota, 1894, Vol. I, Sec. 39, Chap. 1.
Laws of Minnesota, 1895, Chap. 276, page 661.
Laws of Minnesota, 1897,
(Amendment of 1895), Chap. 125, page 261.
(Amendment of 1895), Chap. 137, page 273.
Laws of Minnesota, 1899, Chap. 349, page 447-448.
Laws of Minnesota, 1901, Chap. 216, page 297-304.
Laws of Minnesota, 1902, (Extra Session), Chaps. 6 and 8, pages 55-56.

MISSISSIPPI

Annotated Code of Mississippi, 1890, Sec. 3256-3275.
Session Laws, 1892, Chap. 69, page 148.
Session Laws, 1902, page 105 et seq.

MISSOURI

Revised Statutes of Missouri, 1899, Vol. 2, Sec. 7082-7085.
Session Laws, 1901, pages 144, 149, 165.
Session Laws, 1903, page 193.

MONTANA

Montana Codes, 1895, Vol. I, Art. 2, pages 179-181.
Session Laws, 1901, pages 115-116.

NEBRASKA

Compiled Statutes, 1901, pages 586, 602, 604.
Session Laws, 1903, page 294-298.

NEVADA

Laws of Nevada, 1883, page 28.

NEW HAMPSHIRE

Statutes and Session Laws of New Hampshire, 1901, pages 140-141.
Session Laws, 1901, page 604.

NEW JERSEY

General Statutes of New Jersey, 1895, Vol. 2, pages 1371, 1369.
Session Laws, 1903, page 603.
Session Laws, 1904, page 416.

NEW YORK

Heydecker's General Laws and Statutes, 1901, Vol. I, pages 337-351.
Session Laws, 1902, Vol. I, page 488.
Session Laws, 1903, Vol. 1, page 268.
Vol. 2, page 1279.
Session Laws, 1904, Vol. 1, page 900.
Vol. 2, page 1247.

NORTH DAKOTA

Revised Codes of North Dakota, 1899, Secs. 497, 6898, 498.
Laws of North Dakota, 1899, Chap. 38, page 36.
Laws of North Dakota, 1901, Chap. 47, page 60.

NORTH CAROLINA

Session Laws, 1901, Chap. 752, page 978.

OHIO

Code of Ohio, 1897, Sec. 1098, 1099.
Laws of Ohio, 1898, page 652.
Laws of Ohio, 1904, page 439.

OREGON

Annotated Codes and Statutes of Oregon, 1902, Vol. 2, Chap. 10, page 974.

PENNSYLVANIA

Pennsylvania Statutes, 1896, Vol. I, page 1735.

RHODE ISLAND

General Laws of Rhode Island, 1896, pages 85-88.
Session Laws, January, 1899, Chap. 662, page 60.
Public Laws, January, 1902, Chap. 867, page 150.
Public Laws, December, 1902, Chap. 1078, page 35.

SOUTH CAROLINA

Session Laws, 1888, page 20.
Session Laws, 1896, page 56.
Session Laws, 1900, page 375.
Session Laws, 1902, page 375.
Session Laws, 1903, pages 9, 112.

SOUTH DAKOTA

Annotated South Dakota Statutes, 1901, Vol. I, Secs. 2117, 2039.

TENNESSEE

Session Laws, 1899, Chap. 407, page 963.
Session Laws, 1901, Chap. 39, page 54.
Session Laws, 1903, Chap. 241, page 553.

TEXAS

Laws of Texas, 1895, page 40.

UTAH

Revised Statutes of Utah, 1898, Chap. 3, page 259.
Laws of Utah, 1899, pages 118-119.
Laws of Utah, 1901, pages 72-73.

VIRGINIA

Virginia Code, 1904,
Constitution of Virginia, Sec. 35, page CCXVI, Vol. I, Sec. 122c, 145a.

WASHINGTON

Codes and Statutes of Washington, 1897, Vol. I, Sec. 1349, Chap. 8, page 356.

WEST VIRGINIA

Acts of West Virginia, 1891, page 175.

WISCONSIN

Wisconsin Statutes, 1898, Vol. I, Chap. 5, page 164.
Laws of Wisconsin, 1903, Chap. 451, p. 754 et seq.

WYOMING

Election Laws of Wyoming, 1902, Chap. 3.

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